CONCORDIA FIRE INSURANCE COMPANY,

Complainant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEE.

THOMAS J. COURTNEY,
LEON HENSCHEL,
LOUIS H. GERDAU,
HARRIS F. WILLIAMS,
HIRAM W. GILBERT,

Counsel for Appellee.

INDEX.

PAGE

TABLE OF CASES ii

STATEMENT OF CASE 1-4

SUMMARY OF ARGUMENT 5-8

ARGUMENT:

I. The constitutionality of Section 30 of the Act of 1869 was settled by the decision of this court in Hanover Fire Insurance Co. v. Harding, 272 U. S. 494 9-13

II. There are essential differences between the Hanover case and the Quaker City Cab Company case 13-16

III. Pacific Express Company v. Seibert, 142 U. S. 339, has not yet been overruled 17-20

IV. The fact that in ascertaining net receipts losses from fire and other risks are not deducted from gross receipts does not invalidate the tax 20-36

V. A fairer method of taxing the foreign insurance companies would be by a capital stock tax 37-38

VI. In determining whether the tax on net receipts is illegally discriminatory, the privilege tax imposed by the Act of 1919 must be ignored 38-40

VII. Permitting casualty companies to do some of the kinds of business done by fire insurance companies cannot be given the effect of invalidating Section 30 of the Act of 1869 40-45

VIII. Permitting casualty companies to do some of the kinds of business done by fire insurance companies cannot be given the effect of relieving foreign fire insurance companies from the payment of the net receipts tax on the

kinds of business done by casualty companies 45-46
IX. The complaint that non-resident incorporated companies, individuals and Lloyds were not taxed on their net receipts is of no force.... 46-49
X. The question of the omission to tax casualty companies does not affect the taxes for the years 1923-1926 49-50
XI. The opinion of the Supreme Court of Illinois in People ex rel. v. Fayart, is of no weight as authority in the instant case..... 50-53
XII. The taxes for the year 1927 are valid..... 53-55
Conclusion 56

Appendix:

I. Assignments of error in Hanover Fire Ins. Co. v. Harding, 272 U. S. 494..... 57-58
II. Extracts from bill in chancery in Hanover Fire Ins. Co. v. Harding, 272 U. S. 494..... 58-65
III. Laws of New York 65-66
IV. Laws of New Jersey 67-68
V. Laws of Ohio 69-70

Table of Cases.

Adams Express Co. v. Ohio, 165 U. S. 223, 228.. 5, 8, 18, 55
Adsit v. Lieb, 76 Ill. 118..... 8, 55
Allgeyer v. Louisiana, 165 U. S. 578..... 7, 46
American Express Co. v. Raymond, 189 Ill. 232..... 8, 55
American Sugar Refining Co. v. Louisiana, 179 N. S. 95 ..... 5, 19
Barnes v. People, 168 Ill. 425..... 7, 46
Beers v. Glynn, 211 U. S. 484..... 6, 19
Citizens Bank v. Durr, 257 U. S. 99..... 7, 44
Citizens Telephone Co. v. Fuller, 229 U. S. 330..... 6, 19

Cummings v. Weber, 218 Ill. 521 ..... 8, 55
Earl & Wilson v. Raymond, 188 Ill. 15 ..... 8, 55
Florida C. & P. R. R. Co. v. Reynolds; 183 U. S. 470 ... 5, 19
Gulf, etc., Ry. Co. v. Ellis, 165 U. S. 155 ..... 5, 18
Hanover Fire Ins. Co. v. Harding, 272 U. S. 494 .....
..... 5, 6, 7, 8, 9, 10, 11, 12, 13, 20, 38, 42, 43, 45
Hanover Fire Ins. Co. v. Carr, 317 Ill. 111 ..... 8, 13, 50, 53
Hanover Fire Ins. Co. v. Harding, 327 Ill. 590 .....
..... 8, 13, 15, 51, 53
Hart Refineries v. Harman, 278 U. S. 499 ..... 6, 19
Interstate Busses Corporation v. Holyoke, 273 U. S. 45 ..... 7, 45
Jeffery Apartment Bldg. Corp. v. Harding, 347 Ill. 341 ..... 8, 55
Leper v. Pulsifer, 37 Ill. 118 ..... 8, 55
Lindsley v. National Carbonic Gas Co., 220 U. S. 61 ... 7, 44
Magoun v. Illinois T. & S. Bank, 170 U. S. 292 ..... 5, 19
Minnesota Rate Cases, 230 U. S. 352 ..... 7, 45
National Fire Ins. Co. v. Hanberg, 215 Ill. 378 6
Packard v. Banton, 264 U. S. 140 ..... 6, 19
Pacific Express Co. v. Seibert, 142 U. S. 339 .. 5, 6, 17, 19, 21
Paine Lumber Co. v. Neal, 244 U. S. 450 ..... 6, 19
Peirce v. Carlock, 224 Ill. 608 ..... 8, 55
People v. Barrett, 309 Ill. 53 ..... 8, 50
Pratt v. Raymond, 188 Ill. 469 ..... 8, 55
Quaker City Cab Company v. Pennsylvania, 277 U. S. 389 ..... 5, 13
Quong Wing v. Kirkendall, 223 U. S. 58, 59 ..... 7, 44
Roach & Co. v. Harding, 348 Ill. 454 ..... 7, 46
Roberts & S. Co. v. Emmerson, 271 U. S. 50 ..... 6, 19
St. Louis Cotton Press Co. v. Arkansas, 260 U. S. 34 .. 7, 46
St. Louis & Southwestern Ry. Co. v. Arkansas, 235 U. S. 368 ..... 6, 19
Sanitary District v. Young, 285 Ill. 351 ..... 8, 55

Shaffer v. Carter, 252 U. S. 37, 64 ..... 6, 19
Tullis v. Lake Erie, etc., R. R. Co., 175 U. S. 95 ..... 5, 19
Watson v. State Comptroller, 254 U. S. 122 ..... 6, 19
Weaver v. Bulmer Bros. Co., 270 U. S. 402 ..... 7, 45
Western Union Telegraph Co. v. Indiana, 165 U. S. 309 ..... 5, 19

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

CONCORDIA FIRE INSURANCE COMPANY,
a Corporation,

Appellant.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The judgment of the Supreme Court of Illinois is divisible into two parts, the first dealing with the taxes for the years 1923 to 1926, inclusive, and the second dealing with the taxes for the year 1927.

The Taxes for 1923-1926.

In each of the years 1923 to 1926, inclusive, the Board of Review had accepted the Insurance Company's returns of net receipts as correct and in compliance with the mandate of the Supreme Court of Illinois in the *Barrett Case*,

309 Ill. 53, had assessed them the full amount without debasement or division by 2. Accordingly the assessments (Printed Record, pp. 28-29) were as follows:

For the year 1923	$ 85,926.00
For the year 1924	139,035.00
For the year 1925	153,315.00
For the year 1926	96,853.00

Had these returns been accepted by the Board of Review in 1927 as correct and reduced by debasement and division to 30 per cent, as the Insurance Company claimed should have been done, the assessments and the taxes thereon (Printed Record, pp. 28-29) would have been as follows:

	Assessments	Taxes
For the year 1923	$25,777.80	$2,017.00
For the year 1924	41,710.50	3,528.00
For the year 1925	45,994.50	4,072.00
For the year 1926	29,055.90	2,694.00
Total taxes		$12,311.00

The Board of Review, however, in reviewing these assessments in 1927 and making in place thereof alleged "omitted property" assessments, rejected the returns which the Insurance Company had made and made new assessments which (Printed Record, pp. 28-29), with the taxes extended thereon, were as follows:

	Assessments	Taxes
For the year 1923	$74,000.00	$5,853.40
For the year 1924	83,365.00	7,019.48
For the year 1925	55,910.00	5,059.58
For the year 1926	67,070.00	6,312.96
Total taxes		$24,245.42

In its opinion in this case (Printed Record, pp. 147, 148, 153, 154) the Supreme Court of Illinois held that the as-

sessments which had been made by the Board of Review in those previous years could not be changed by the subsequent Board of Review in 1927, but must be treated as valid and binding. Accordingly the court, in pursuance of the stipulation of the parties by which the action was to be treated as one in equity, decreed that the Insurance Company, instead of paying the $24,245.42 of taxes, should pay the $12,311, the amount which it insisted was the proper amount if its own returns were accepted and reduced by debasement and division to 30 per cent.

The only receipts included in the returns made by the insurance companies were those from *fire, marine and inland navigation insurance* (Printed Record, pp. 17, 18, 99, 103).

Hence, so far as the taxes for the years 1923 to 1926, inclusive, are concerned, the Insurance Company has no valid ground of complaint if Section 30 of the Act of 1869 is a valid law when construed as one imposing a personal property tax extended upon the same percentage of value as that applied in the assessment of other personal property and when no other receipts are assessed than those derived *from fire, marine and inland navigation insurance.* It is taxed for those years precisely as it claimed in the *Hanover Case* it was entitled to be taxed if the law was valid and the tax was extended upon the amount of the net receipts properly debased and equalized. *Furthermore, it was taxed upon its own returns voluntarily made.*

The Taxes for 1927.

The assessment made by the Board of Review for the year 1927 was an original assessment and not an omitted property assessment. The insurance companies, over 200

in number, appeared before the Board of Review pursuant to notice, refused to furnish the Board with the information which it asked for and the result was a net receipts assessment against the appellant amounting to $121,550, upon which the taxes extended were $5,895.19 (Printed Record, p. 29). The complaint against these taxes, aside from the complaint that Section 30 of the Act of 1869, however construed, is in violation of the Fourteenth Amendment, is (Appellant's Brief, pp. 45, 46, 50) that the assessment was made by deducting only 30 per cent from gross receipts on account of expenses and extending the remainder without debasement, scaling or equalization. This complaint, as we shall show later on (*post*, pp. 53-54) is without foundation so far as the debasement, scaling or equalization is concerned. Furthermore the refusal of appellant to file a return, or give the Board required information, precluded it from successfully complaining of the amount of the assessment.

Adding the $5,895.19, as the taxes for 1927, to the $12,311 for the years 1923 to 1926, inclusive, made the total $18,206.19 for which the Supreme Court of Illinois rendered judgment.

SUMMARY OF ARGUMENT.

I.

The constitutionality of Section 30 of the Act of 1869 was settled by the decision of this court in Hanover Fire Insurance Company v. Harding, 272 U. S. 494.

Hanover Case, 272 U. S. 506-507.

Printed Record in *Hanover Case*, p. 43 (Appendix, *post* 58-65).

Printed Record in this case, pp. 158, 159.

II.

There are essential differences between the Hanover case and the Quaker City Cab Company case.

Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389.

III.

Pacific Express Company v. Seibert, 142 U. S. 339, has not yet been overruled.

Pacific Express Co. v. Seibert, 142 U. S. 339.

Gulf, Etc., Ry. Co. v. Ellis, 165 U. S. 155.

Adams Express Co. v. Ohio, 165 U. S. 223, 228.

Western Union Tel. Co. v. Indiana, 165 U. S. 309.

Magoun v. Illinois T. & S. Bk., 170 U. S. 292.

Tullis v. Lake Erie, Etc., R. Co., 175 U. S. 353.

American Sugar Refining Co. v. Louisiana, 179 U. S. 95.

Florida C. & P. R. R. Co. v. Reynolds, 183 U. S. 470.

Beers v. *Glynn*, 211 U. S. 484.
Citizens Telephone Co. v. *Fuller*, 229 U. S. 330.
St. Louis & S. W. Ry. Co. v. *Arkansas*, 235 U. S. 368.
Paine Lumber Co. v. *Neal*, 244 U. S. 450.
Shaffer v. *Carter*, 252 U. S. 37.
Watson v. *State Comptroller*, 254 U. S. 122.
Packard v. *Banton*, 264 U. S. 140.
Roberts & S. Co. v. *Emmerson*, 271 U. S. 50.
Hart Refineries v. *Harmon*, 278 U. S. 499.

IV.

The fact that in ascertaining net receipts losses from fire and other risks are not deducted from gross receipts does not invalidate the tax.

National Fire Ins. Co. v. *Hanberg*, 215 Ill. 378.
Hanover Case, 272 U. S. 506.
Section 12 of Act of 1869.
Pacific Express Co. v. *Seibert*, 142 U. S. 339.

V.

A fairer method of taxing the foreign insurance companies would be by a capital stock tax.

VI.

In determining whether the tax on net receipts is illegally discriminatory, the privilege tax imposed by the Act of 1919 must be ignored.

Hanover Case, 272 U. S. 510, 511.

VII.

Permitting casualty companies to do some of the kinds of business done by fire insurance companies cannot be given the effect of invalidating Section 30 of the Act of 1869.

Hanover Case, 272 U. S. 473.

Lindsley v. *National Carbonic Gas Co.,* 220 U. S. 61.

Quong Wing v. *Kirkendall,* 223 U. S. 58, 59.

Citizens Bank v. *Durr,* 257 U. S. 99.

Interstate Busses Corporation v. *Holyoke,* 273 U. S. 45, 54.

Weaver v. *Palmer Bros. Co.,* 270 U. S. 402.

Minnesota Rate Cases, 230 U. S. 352.

VIII.

Permitting casualty companies to do some of the kinds of business done by fire insurance companies cannot be given the effect of relieving foreign fire insurance companies from the payment of the net receipts tax on their receipts from the kinds of business done by casualty companies.

IX.

The complaint that non-incorporated companies, individuals and Lloyds were not taxed on their net receipts is of no force.

Roach & Co. v. *Harding,* 348 Ill. 454.

Allgeyer v. *Louisiana,* 165 U. S. 578.

St. Louis Cotton Compress Co. v. *Arkansas,* 260 U. S. 34.

Barnes v. *People,* 168 Ill. 425.

X.

The question of the omission to tax casualty companies does not affect the taxes for the years 1923 to 1926, inclusive.

XI.

The opinion of the Supreme Court of Illinois in People ex rel. v. Fayart is of no weight as authority in the instant case.

People v. *Barrett*, 309 Ill. 53.
Hanover Fire Ins. Co. v. *Carr*, 317 Ill. 366.
Hanover Fire Ins. Co. v. *Harding*, 272 U. S. 494.
Hanover Fire Ins. Co. v. *Harding*, 327 Ill. 590.

XII.

The taxes for the year 1927 are valid.

Pratt v. *Raymond*, 188 Ill. 469.
Earl & Wilson v. *Raymond*, 188 Ill. 15.
American Express Co. v. *Raymond*, 189 Ill. 232.
Leper v. *Pulsifer*, 37 Ill. 110.
Cummings v. *Weber*, 218 Ill. 521.
Adsit v. *Lieb*, 76 Ill. 198.
Peirce v. *Carlock*, 224 Ill. 608.
Sanitary District v. *Young*, 285 Ill. 351.
Jeffery Apartment Bldg. Corporation v. *Harding*, 347 Ill. 341.

ARGUMENT.

I.

The constitutionality of Section 30 of the Act of 1869 was settled by the decision of this court in Hanover Fire Insurance Company v. Harding, 272 U. S. 494.

In that case the court had before it the following facts:

1. That foreign fire insurance companies were taxed not only upon their net receipts from fire, marine and inland navigation insurance, but also on their net receipts from tornado, theft, explosion, damage to property by collision, crop and other similar lines of insurance, whereas domestic fire insurance companies were not so taxed otherwise than by the taxes upon the property in which their net receipts were invested and their capital stock. This is stated in the opinion of Mr. Chief Justice Taft, 272 U. S., pp. 505-506.

2. That the net receipts so taxed were the gross receipts after operating expenses had been deducted, the losses from fire and other risks assumed not being deducted. This also is stated in the same opinion, 272 U. S., p. 506.

3. That domestic and foreign casualty companies, Lloyd Associations and individuals were engaged in the insurance of risks from tornado, theft, explosion, etc., and were not taxed on their net receipts therefrom. This is shown by the record to have been claimed by the Insurance Company in the *Hanover Case* (Printed Record in that case, pp. 7-9, 10, 40, *post* 59-63).

4. That from 1869 to 1922 the tax on net receipts was treated as a tax on personal property and their assessment was by equalization and debasement reduced from full value as all other personal property. This is shown by the opinion of Mr. Chief-Justice Taft, 272 U. S. 506-507, as well as by the record in the *Hanover Case* (Printed Record in that case, p. 43).

These are the same facts now relied upon by appellant in support of its claim that Section 30 of the Act of 1869 is in violation of the Fourteenth Amendment. It is claimed, however, by appellant that some of the questions now presented were not presented to this court in the *Hanover Case*. These questions claimed not to have been so presented, and which appellant now insists upon presenting as new questions, are, *first*, whether foreign fire insurance companies are illegally discriminated against because casualty companies, whether foreign or domestic, as well as Lloyd's Associations and individuals, are not taxed upon their net receipts *through a special net receipts tax*, and, *second*, because there is an arbitrary discrimination in favor of domestic fire insurance companies, in that they are permitted to have the benefit of a deduction of their losses paid while foreign fire insurance companies are denied the same deduction.

In effect appellant claims that although no new facts are presented by the record, it is entitled to present new arguments which might have been presented in the *Hanover Case* had counsel then seen fit to present them. To fully appreciate the unfounded character of this claim it is only necessary to compare the first two assignments of error in the *Hanover Case* (Appendix, *post*, pp. 57-58), with the first, second and third assignment of errors in the instant case (Printed Record, pp. 158, 159), and with

the allegations of the complainant's bill in the *Hanover Case* (Appendix, *post*, pp. 59-63), from which it will appear that in that case as well as in this the Insurance Company claimed the law violated the Fourteenth Amendment by discriminating against foreign fire insurance companies not only in favor of domestic fire insurance companies, but also in favor of domestic and foreign casualty companies, individuals and other insurers.

Furthermore, on page 74 of the brief for plaintiff in error in the *Hanover Case* (on file in the clerk's office), the court will find the following:

> "The plaintiff in error is compelled, for example, to pay tax upon all *crop insurance, upon all automobile theft and collision insurance and upon all sprinkler leakage insurance*. They are competitively written by domestic fire insurance companies *and by so-called casualty companies*. The plaintiff in error has power by its charter and under license to do such business and like power is lodged in competitors to do an identical business. *The plaintiff may not lawfully be subjected to tax upon such writings from which such others are exempted*. It is not a valid classification in such a revenue producing law to put plaintiff in error into a burdened class from which such others are exempted merely because the charter of plaintiff in error permits it to do fire insurance, which right is denied to *the casualty companies*, whereas the tax is upon receipts from insurance upon crop, against the elements, such as wind and hail, sprinkler leakage, theft, collision, explosion, etc."

As a matter of fact, in that case, as in this, there was no assessment for the years 1923 to 1926, inclusive, of any receipts than those derived from fire, marine and inland navigation insurance.

It is clear that the court was called upon in the *Hanover Case* to decide, upon the same state of facts now alleged,

that the law in question violated the Fourteenth Amendment. It is equally clear that if the law was invalid the Insurance Company was entitled to have it so declared and the litigation ended by a simple reversal of the judgment. The court, however, not only did not declare the law invalid, but on the contrary declared it would be valid if properly construed. Nothing could be plainer than what the court intended when, in its opinion (272 U. S. 516), it said:

> "When the net receipts were treated as personal property and the assessment thereon as a personal property tax subjected to the same reductions for equalization and debasement, *it might well have been said that there was no substantial inequality as between domestic corporations and foreign corporations,*" etc., etc.

Of course whenever it *may well be said* that no discrimination exists, the court cannot hold the Fourteenth Amendment is violated. To justify overturning the law the discrimination must be manifest either on the face of the law itself or through evidence brought before the court, the burden of proof being upon the party assailing the law as invalid.

Any claim of appellant that is not bound by the decision in the *Hanover Case* because it was not a party to it would be without force. That case was one of eleven cases prosecuted for the benefit and at the expense of all the foreign fire insurance companies then doing business in Illinois by bills in chancery filed in the Superior Court of Cook County, Illinois. One of the companies was the National Fire Insurance Company which is also one of the companies the rights of which are to be settled by this appeal. Extracts from its bill in chancery are set forth in the record in this case. (Printed Record, pp. 109-113.)

The *Hanover Case* was selected as a test case. They employed an eminent lawyer, the present Chief Justice of this court, who argued the case in their behalf before the court. The same counsel who represented the appellant in the court below appeared as one of the counsel for the Hanover Company throughout the entire litigation. *Hanover Fire Insurance Co.* v. *Carr*, 317 Ill. 366; *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 474; *Hanover Fire Insurance Company* v. *Harding*, 327 Illinois 590.

But assuming the decision in the *Hanover Case* is not binding upon appellant, it is plain it was correctly decided.

II.

There are essential differences between the Hanover case and the Quaker City Cab Company case.

In *Quaker City Cab Company* v. *Pennsylvania*, 277 U. S. 389, relied upon by appellant as an authority against the validity of this law now in question, the court had before it a Pennsylvania statute providing as follows:

> "That every * * * transportation company, * * * now or hereafter incorporated or organized by or under any law of this commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this commonwealth, and owning (or) operating any railroad or other device for the transportation of freight or passengers or oil * * * shall pay to the state treasurer a tax of eight mills upon the dollar upon the gross receipts of said corporation * * * received from passengers and freight traffic transported wholly within the state. * * *"

The Cab Company was subject to competition in its busines by individuals and partnerships operating taxicabs. The act did not apply to them, and no tax was imposed upon

their receipts. Corporations operating taxicabs were not exempted from any of the taxes imposed upon natural persons carrying on that business. *Every such corporation, whether domestic or foreign, paid a capital stock tax of five mills on the actual value of its capital stock and a bonus of one per cent on the par value of all stock issued, if it was a domestic corporation,* AND A LIKE RATE ON ITS CAPITAL EMPLOYED IN PENNSYLVANIA IF IT WAS A FOREIGN CORPORATION.

This court, in holding the law to be in violation of the Fourteenth Amendment, among other things, said:

> "The equal protection clause extends to foreign corporations within the jurisdiction of the state and safeguards to them the protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. * * * *The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection,* but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation. * * * Here the tax is one that can be laid upon receipts belonging to a natural person quite as conveniently as upon those of a corporation. It is not peculiarly applicable to corporations as are taxes on their capital stock or franchises. It is not taken in lieu of any other tax or used as a measure of one intended to fall elsewhere. It is laid upon and is to be considered and tested as a tax upon gross receipts; it is specifically that and nothing else."

The case thus dealt with by the court was essentially different from that now before it.

First. A foreign taxicab company cannot carry on business within a state without having property within its juris-

diction subject to taxation. It must at least have taxicabs and facilities for taking care of them during the hours of the day when they are not in use. These taxicabs and facilities are property, either personal or real, which is subject to property taxation. On the other hand foreign fire insurance companies can and do carry on business within the State of Illinois without having within its jurisdiction any property whatever. It is safe to say that out of the upwards of 200 such companies carrying on business in Illinois, there are not 20 of them which have any property at all within the state or pay any taxes other than net receipts taxes. It is true the Revenue Act contains provisions which requires all tangible personal property to be assessed and taxed, whether it is owned by domestic or foreign companies, but this does not result in the taxation of the tangible property of the foreign companies for they have none within the state. This fact is clearly pointed out by the Supreme Court of Illinois in *Hanover Fire Ins. Co.* v. *Harding*, 327 Ill. 590, 597. Therefore, as foreign corporations are not taxed on their intangible property by means of a capital stock tax or otherwise, the practical operation of the Revenue Act is to relieve foreign fire insurance companies from all other property taxation and they would escape taxation altogether if they could not be taxed upon their receipts. This is made clear by the evidence introduced upon the trial by the Insurance Company showing that the business of the insurance companies is done by agents who are paid by commissions out of which they pay all their office expenses and then remit the premiums, less their commissions, to the different companies (Printed Record, p. 104). They have no occasion for owning property within the state and there is no evidence in the rec-

ord that the appellant ever did own any such property or pay any taxes thereon.

Second. The laws of Pennsylvania imposed a property tax upon the taxicabs and other tangible personal property of both domestic and foreign taxicab companies and in addition thereto imposed upon a domestic company a capital stock tax of five mills on the actual value of its capital stock, together with a bonus of one-third of one per cent on the par value of all its stock issued. *It also imposed upon a foreign company a tax of five mills on its capital employed in Pennsylvania, thus putting domestic and foreign companies upon as nearly a substantial equality as was practicable.*

There is no similarity between the *Taxicab Company Case* and the instant case. The contest in that case was not one between a domestic corporation and a foreign corporation, but was one between corporations, both domestic and foreign, on the one side and individuals on the other. The corporations, solely because they were corporations, were subjected to a tax which was a privilege or occupation tax to which individuals were not subjected, but to which they might have been subjected just as well as corporations.

In the instant case the tax is not a privilege or occupation tax but is a special form of property tax, the property being premiums which the foreign corporations withdraw from the state before they can be assessed but which the domestic companies cannot evade taxation on.

Appellant in its brief insists that the tax is not a property tax but an occupation tax. We will not waste time by disputing by what name the tax is called. In any event it is a special form of tax to compensate for the property tax imposed upon domestic companies but which it would be impossible to impose upon the foreign companies.

III.

Pacific Express Company v. Seibert, 142 U. S. 339, has not yet been overruled.

In *Pacific Express Co.* v. *Seibert,* 142 U. S. 339, 35 L. Ed. 1035, the court sustained the validity of a Missouri Act which imposed a tax upon the business of express companies which employed railroad and steamboat companies to carry their express matter, although it did not impose a like tax upon railroad or steamboat companies which also carried on express business and used for that purpose their own means of conveyance. In delivering the opinion of the court Mr. Justice Lamar, among other things, said:

> "There is an essential difference between the companies defined by this act and railroad or steamboat companies or other companies that own their own means of transportation. The vital distinction is this: Railroad companies pay taxes on their roadbeds, rolling stock, and other tangible property, as well as, generally upon their franchise; and steamboat companies likewise pay a tax upon their tangible property. * * * On the other hand, express companies, such as are defined by this act, have no tangible property of any consequence, subject to taxation under the general laws. There is, therefore, no way by which they can be taxed at all unless by a tax upon their receipts for business transacted. This distinction clearly places express companies defined by this act in a separate class from companies owning their own means of transportation. They do not do business under the same conditions or under similar circumstances. In the nature of things, and irrespective of the definitive legislation in question, they belong to different classes."

The reasoning of this opinion applies with equal force to the difference between the taxation of domestic insurance companies and the taxation of foreign insurance companies. The former must pay taxes upon property of at least the

par value of their capital stock, plus their unearned premiums, while the latter, as this court has pointed out, are in a position to escape property taxation altogether.

That the case thus cited is plainly decisive of the instant case is shown by the following provision in the Missouri Act which was assailed in that case as in violation of the 14th Amendment (142 U. S. 340, 341, 35 L. Ed. 1036).

> "And providing, further, that nothing herein contained shall release such express companies from the assessment and taxation of their tangible property in the manner that other tangible property is assessed and taxed."

As a matter of course, the express companies must have had some tangible property, such as office furniture, horses, wagons, &c., and thus must have been compelled to pay personal property taxes, while in the instant case it was not necessary for the insurance company to have any tangible property at all.

The tax imposed by that act was two per cent of the company's gross receipts after deducting therefrom the amounts paid to the railroad and steamboat lines for transporting the express matter. The amounts thus paid were in reality the receipts of the railroad and steamboat lines so that the remaining receipts were really the gross receipts of the express company. The receipts taxed were the receipts within the state on local business and the proper proportion of the receipts from inter-state traffic.

This decision of the court has never been questioned or overruled, but on the contrary has been cited with approval in the following among other subsequent cases:

Gulf, &c. Ry. Co. v. *Ellis*, 165 U. S. 155 Ed. 668.

Adams Express Co. v. *Ohio*, 165 U. S. 223, 228, 41 L. Ed. 696, 698.

Western Union Telegraph Co. v. *Indiana*, 165 U. S. 309, 41 L. Ed. 727.

Magoun v. *Illinois T. & S. Bk.*, 170 U. S. 292, 42 L. Ed. 1043.

Tullis v. *Lake Erie, &c., R. Co.*, 175 U. S. 353, 44 L. Ed. 195.

American Sugar Refining Co. v. *Louisiana*, 179 U. S. 95, 45 L. Ed. 105.

Florida C. & P. R. R. Co. v. *Reynolds*, 183 U. S. 470, 46 L. Ed. 287.

Beers v. *Glynn*, 211 U. S. 484, 53 L. Ed. 293.

Citizens Telephone Co. v. *Fuller*, 229 U. S. 330, 57 L. Ed. 1213.

St. Louis Southwestern Ry. Co. v. *Arkansas*, 235 U. S. 368, 59 L. Ed. 273.

Paine Lumber Co. v. *Neal*, 244 U. S. 450, 61 L. Ed. 1256.

Shaffer v. *Carter*, 252 U. S. 37, 64 L. Ed. 447.

Watson v. *State Comptroller*, 254 U. S. 122, 65 L. Ed. 170.

Packard v. *Banton*, 264 U. S. 140, 68 L. Ed. 596.

Roberts & S. Co. v. *Emmerson*, 271 U. S. 50, 70 L. Ed. 827.

Hart Refineries v. *Harman*, 278 U. S. 499, 73 L. Ed. 477.

Of the above cases *Packard* v. *Banton*, 264 U. S. 148, was decided February 18, 1924, opinion by Mr. Justice Sutherland; *Roberts & S. Co.* v. *Emmerson*, 271 U. S. 50, was decided April 12, 1926; opinion by Mr. Justice Stone, and *Hart Refineries* v. *Harman*, 278 U. S. 499, was decided February 18, 1929, opinion by Mr. Justice Sutherland. In the latter case *Pacific Express Co.* v. *Seibert*, was cited in support of the following propositions:

> "The power of the State to classify for purposes of taxation is of wide range and flexibility, provided that the classification rests upon a substantial difference so that all persons similarly circumstanced will be treated alike. Statutes which tax one class of property while excepting another class necessarily result in imposing a greater burden upon the property taxed than would be the case if the omitted property were included. But such statutes do not create an inequality in the constitutional sense. Nor is the imposition of an excise tax upon one occupation, or one activity from which other and different occupations are exempt, a denial of equal protection. It is enough if all in the same class are included and treated alike. These propositions are so firmly established by repeated decisions of this court that further discussion is unnecessary."

As we shall point out later on *Pacific Express Co.* v. *Seibert*, also disposes of the contention of appellant, that to render the law in question valid, fire losses, in addition to expenses, should be deducted from gross receipts.

IV.

The fact that in ascertaining net receipts losses from fire and other risks are not deducted from gross receipts does not invalidate the tax.

The fact that such losses were not deducted was before this court in the *Hanover Case* and was mentioned in the opinion of Mr. Chief Justice Taft, 272 U. S. 506. It is therefore not a new fact, although it is made the basis of a new argument.

The claim of right to deduct fire losses came before the Supreme Court of Illinois in *National Fire Insurance Co.* v. *Hanberg*, 215 Ill. 378, where it was decided aversely to appellant's contention and that decision has been acquiesced in by all of the 208 foreign fire insurance companies ex-

cepting the 17 which are interested in the present appeal, and was not questioned by these 17 until the trial of this case in the Circuit Court in 1932. The evidence introduced upon that trial (Printed Record, p. 107) showed that fire losses consumed at least 45% of the gross receipts and it was claimed that expense consumed about 50% more, so that, according to appellant's claim only about 5% of the gross receipts would be subject to the tax if fire losses and all expenses were deducted. The tax upon that basis would be so small in any event that it would scarcely be worth the expense of assessment and extension. In many cases there would be no tax at all.

The situation in respect to these deductions is not essentially different from that presented in *Pacific Express Co. v. Seibert*, 142 U. S. 339 (*ante*, p. 17). As pointed out in our comment on that case (*ante*, p. 18) the Express Company was required to pay taxes on whatever tangible property it owned, but was allowed to deduct therefrom the amount paid the railroad and steamboat companies for carrying the Express Company's express matter, *but not the other expenses of carrying on its business, such as office rents, salaries of agents and other employees and the other costs of collecting and distributing its express matter.* Its tax, therefore, was not a tax on net profits, but upon the gross amount paid by the shippers less the shares received by the railroad and the steamboat companies for the portion of the work performed by them.

Counsel for appellant, in their efforts to magnify the burden imposed upon the foreign fire insurance companies by the tax, ignore the nature of their business and the source of their profits. As is well known a fire insurance company is of the nature of an investment trust. Its principal profits are from its investment of its unearned pre-

miums, just as the profits of a bank result from its loaning out the money of its depositors until it is called for.

The insurance laws of Illinois do not control the disposition of the premiums received by a foreign fire insurance company and consequently these premiums, less the agent's commissions, which do not exceed 25%, can be, and, in fact, are, removed out of the State and the company, therefore, escapes the payment of any taxes on them or on the securities in which they are invested. When thus removed they are kept invested, just as the moneys of a bank are kept invested, until it becomes necessary to use them in the payment of fire losses. It is important, therefore, to consider what part the premiums of a fire insurance company play in the production of profits from the carrying on of its business.

Fire insurance companies in Illinois, as in other States, are under the supervision of an insurance department the duty of which is to see that they obey the regulatory provisions of the law and keep in a solvent condition and that their premium rates are neither excessive nor so low as to endanger their ability to meet their obligations to their policy holders. They are required to make reports each year showing the business transacted, their receipts, assets, expenses, losses, liabilities, etc., and the results of their reports are published annually by the Division of Insurance of the Department of Trade and Commerce in a printed volume entitled "Insurance Report of the Department of Trade and Commerce, Division of Insurance, Part 1, Fire Insurance." The reports for the years in question contain full information respecting the business and the financial condition of the appellant and the other 16 companies the taxes on which are involved in this appeal. We shall select for illustration the following items:

CONCORDIA FIRE INSURANCE COMPANY.

(Excepting as otherwise indicated the items include the entire business of the company in all the States.)

Page		1924
51	Total assets	$6,217,310.90
50	Loans on bonds and mortgages	1,759,900.00
51	Bonds and shares of stock ov	3,280,655.00
59	Total liabilities (including unearned premiums)	4,283,969.12
59	Unearned premiums	3,882,004.34
59	Paid up capital	1,000,000.00
59	Surplus over all liabilities	933,350.87
59	Total capital and surplus	1,933,350.87
9	Total net premiums received	3,509,200.00
97	Total net premiums received in Illinois	413,694.43
29	Total losses paid	1,593,195.93
87	Total losses paid in Illinois	112,974.09
29	Agents' commissions, brokerage, allowance, etc.	914,278.89
29	Salaries of officers and employees	393,525.99
29	Dividends paid	130,000.00
29	All other disbursements	307,997.01
29	Total disbursements	3,475,586.03
9	Income from interest, dividends and rents	258,304.01
9	Profit on sale, etc., of assets	1,845.00
9	Income from all other sources	226,928.30
67	Income over disbursements	520,392.57

These figures illustrate our contention that a foreign insurance company is an investment trust and that while its profits from fire insurance, after deducting from gross premiums all expenses and fire losses, may be very small, it receives a large income from the investment of its unearned premiums which it removes from Illinois and thus frees from Illinois property taxation.

Thus we find from the foregoing statement the following interesting facts:

Unearned premiums on hand	$3,882,004.34
Outstanding loans on bonds and stocks	1,759,900.00
Income producing bonds and stocks	3,280,655.00
Total of last two items	5,039,955.00
Capital stock and surplus	1,933,350.87
Excess of loans, bonds and stocks over capital and surplus	3,106,604.13
Income over and above fire losses, all other expenses and $130,000 dividends	520,392.57

For the year 1925 (Report, p. 69) the company's income over disbursements, including $90,000 of dividends, was $330,905.47.

For the year 1926 (Report, p. 75) the company's disbursements, including $80,000 of dividends, exceeded its income by $120,832.89.

From these figures we see that, in addition to dividends on its capital stock and surplus, the company receives a very large income from the securities in which its unearned premiums are invested.

Inasmuch as a domestic insurance company is taxed in Illinois by applying the tax rate to the value of all its property, tangible and intangible, as represented by its paid in capital and surplus together with its good will, it would seem that taxing a foreign insurance company doing business in Illinois by applying the tax rate to its capital employed in Illinois would not result in any injustice to it but would be treating it liberally. That is the method employed in Pennsylvania (*ante*, p. 14) and that employed in New York in taxing insurance corporations of foreign countries (Appendix, *post*, pp. 65, 66). As we shall point out later on (*post*, p. 37), a fairer way would be to ascertain the market value of its total shares of capital stock and apply the tax rate to such a proportion of such total value, as the amount of its premiums received in Illinois bears to its

total premium receipts. The capital, aside from good will, employed in Illinois would be such a proportion of its capital and surplus as the business it transacts in Illinois, as represented by its net premiums there received, bears to its entire business as represented by its total premium receipts.

Taking as illustrations the three years 1924, 1925 and 1926, the results are as follows:

CONCORDIA FIRE INSURANCE COMPANY.

(*The figures in parentheses represent the pages of the report.*)

1924.

Total assets (51)	$6,217,310.90
Total liabilities (59)	4,283,969.12
Unearned premiums (59)	3,882,004.34
Paid up capital (59)	1,000,000.00
Surplus (59)	933,350.87
Capital and surplus (59)	1,933,350.87
Total net premiums received (97)	3,509,200.00
Net premiums received in Illinois (29)	413,694.43
Percentage of Illinois business	11.78%
Capital and surplus attributable to Illinois, being 11.78% of $1,933,350.87	227,848.63
Illinois capital and surplus debased to 30%	68,354.59
Tax rate for 1924	8.4 %
Tax on $68,354.59 computed at 8.4%	5,741.78
Tax for Cook County as fixed by court below (Printed Record, p. 29)	3,528.00

CONCORDIA FIRE INSURANCE COMPANY.

1925.

Total assets (51)	$6,564,842.84
Total liabilities (61)	4,763,794.03
Unearned premiums (61)	4,117,897.43
Paid up capital (61)	1,000,000.00
Surplus (61)	801,048.81
Capital and surplus (61)	1,801,048.81

Total net premiums received (21)	3,530,052.29
Net premiums received in Illinois (97)	366,432.52
Percentage of Illinois business	10.38%
Capital and surplus attributable to Illinois, being 10.38% of $1,801,048.81	187,348.86
Illinois capital and surplus debased to 30%	56,204.66
Tax rate for 1925	9.05%
Tax on $56,204.66 computed at 9.05%	5,086.52
Tax for Cook County as fixed by court below (Printed Record, p. 29)	4,072.06

CONCORDIA FIRE INSURANCE COMPANY.

1926.

Total assets (53)	$6,575,515.49
Total liabilities (65)	5,132,493.48
Unearned premiums (65)	4,271,074.74
Paid up capital (65)	1,000,000.00
Surplus (65)	443,022.01
Capital and surplus (65)	1,443,022.01
Total net premiums received (21)	3,676,113.94
Net premiums received in Illinois (105)	275,031.47
Percentage of Illinois business	7.48%
Capital and surplus attributable to Illinois, being 7.48% of $1,443,022.01	107,937.99
Illinois capital and surplus debased to 30%	32,291.39
Tax rate for 1926	9.29%
Tax on $32,291.31 computed at 9.29%	3,001.07
Tax for Cook County as fixed by court below (Printed Record, p. 29)	2,694.00

There are sixteen other companies which are interested in this appeal by virtue of stipulations that the decisions in their cases are to abide by the result of this case (Printed Record, pp. 27-44). We shall select the three largest of these companies, to-wit, the Dubuque Fire and Marine Insurance Company, the Milwaukee Mechanics Insurance Company and the National Fire Insurance Company of Hartford, and present similar figures bearing upon the justice of their taxation. The figures are taken from the

reports for the years 1924, 1925 and 1926, the pages being indicated by the figures in parentheses.

DUBUQUE FIRE AND MARINE INSURANCE COMPANY.

1924.

Total assets (51)	$4,047,145.44
Total liabilities (59)	2,475,170.61
Unearned premiums (59)	2,226,293.37
Paid up capital (59)	500,000.00
Surplus (59)	1,071,974.93
Capital and surplus (59)	1,571,974.93
Total net premiums (9)	1,712,618.21
Illinois premiums (97)	394,035.89
Percentage of Illinois business	23.01
Capital and surplus attributable to Illinois, being 23.01% of $1,571,974.93	351,711.03
Illinois capital and surplus debased to 30%	105,513.31
Tax rate for 1924	8.4 %
Tax on $105,513.30 computed at 8.4%	8,863.12
Tax for Cook County as fixed by court below (Printed Record, p. 29)	3,301.00

DUBUQUE FIRE AND MARINE INSURANCE COMPANY.

1925.

Total assets (53)	$4,241,332.15
Total liabilities (61)	2,632,804.13
Unearned premiums (61)	2,382,427.29
Paid up capital (61)	500,000.00
Surplus (61)	1,108,528.02
Capital and surplus (61)	1,608,528.02
Total net premiums (21)	1,858,998.22
Illinois premiums (99)	398,938.38
Percentage of Illinois business	21.15%
Capital and surplus attributable to Illinois, being 21.15% of $1,608,528.02	345,833.34
Illinois capital and surplus debased to 30%	103,750.02
Tax rate for 1925	9.05%
Tax on $103,750.02 computed at 9.05%	9,389.39
Tax for Cook County as fixed by court below (Printed Record, p. 30)	6,811.00

DUBUQUE FIRE AND MARINE INSURANCE COMPANY.

1926.

Total assets (53)	$4,615,001.50
Total liabilities (66)	2,906,293.96
Unearned premiums (66)	2,623,150.98
Paid up capital (66)	500,000.00
Surplus (66)	1,208,707.54
Capital and surplus (66)	1,708,707.54
Total net premiums (21)	2,409,668.93
Illinois premiums (105)	414,732.10
Percentage of Illinois business	17.2 %
Capital and surplus attributable to Illinois, being 17.2% of $1,708,707.54	293,897.69
Illinois capital and surplus debased to 30%	88,169.31
Tax rate for 1926	9.29%
Tax on $88,169.31 computed at 9.29%	8,190.92
Tax for Cook County as fixed by court below (Printed Record, p. 30)	4,849.00

MILWAUKEE MECHANICS INSURANCE COMPANY.

1924.

Total assets (53)	$9,620,091.35
Total liabilities (61)	5,886,059.10
Unearned premiums (61)	4,915,284.84
Paid up capital (61)	1,250,000.00
Surplus (61)	2,484,232.00
Capital and surplus (61)	3,735,232.25
Total net premiums (11)	4,711,153.21
Illinois premiums (99)	505,757.22
Percentage of Illinois business	10.75%
Capital and surplus attributable to Illinois, being 10.75% of $3,735,232.25	401,547.46
Illinois capital and surplus debased to 30%	120,464.24
Tax rate for 1924	8.4 %
Tax on $120,464.24 computed at 8.4%	10,118.89
Tax for Cook County as fixed by court below (Printed Record, p. 37)	3,603.00

MILWAUKEE MECHANICS INSURANCE COMPANY.

1925.

Total assets (55)	$10,395,019.94
Total liabilities (63)	6,716,025.88
Unearned premiums (63)	5,666,196.50
Paid up capital (63)	1,250,000.00
Surplus (63)	2,428,994.06
Capital and surplus (63)	3,678,994.06
Total net premiums (23)	5,596,949.36
Illinois premiums (101)	659,889.72
Percentage of Illinois business	11.96%
Capital and surplus attributable to Illinois, being 11.96% of $3,678,994.06	408,221.17
Illinois capital and surplus debased to 30%	122,466.35
Tax rate for 1925	9.05%
Tax on $122,466.35 computed at 9.05%	11,083.20
Tax for Cook County as fixed by court below (Printed Record, p. 35)	2,932.00

MILWAUKEE MECHANICS INSURANCE COMPANY.

1926.

Total assets (55)	$12,198,121.18
Total liabilities (68)	7,324,069.78
Unearned premiums (68)	6,164,239.94
Paid up capital (68)	2,000,000.00
Surplus (68)	2,874,051.40
Capital and surplus (68)	4,874,051.40
Total net premiums (23)	5,843,392.70
Illinois premiums (107)	685,218.24
Percentage of Illinois business	11.73%
Capital and surplus attributable to Illinois, being 11.73% of $4,874,051.40	571,726.19
Illinois capital and surplus debased to 30%	171,517.85
Tax rate for 1926	9.29%
Tax on $171,341.63 computed at 9.29%	15,933.09
Tax for Cook County as fixed by court below (Printed Record, p. 37)	3,957.00

NATIONAL FIRE INSURANCE COMPANY.

1924.

Total assets (53)	$36,044,151.77
Total liabilities (61)	22,171,802.69
Unearned premiums (61)	17,884,365.18
Paid up capital (61)	3,000,000.00
Surplus (61)	10,972,349.08
Capital and surplus (61)	13,972,349.08
Total net premiums (11)	17,718,342.35
Illinois premiums (99)	1,655,733.99
Percentage of Illinois business	9.34%
Capital and surplus attributable to Illinois, being 9.34% of $13,972,349.08	1,224,917.40
Illinois capital and surplus debased to 30%	367,475.22
Tax rate for 1924	8.4 %
Taxes on $367,475.22 computed at 8.4%	30,867.92
Tax for Cook County as fixed by court below (Printed Record, p. 38)	8,400.00

NATIONAL FIRE INSURANCE COMPANY.

1925.

Total assets (55)	$38,202,776.74
Total liabilities (63)	23,773,604.08
Unearned premiums (63)	19,324,218.17
Paid up capital (63)	3,000,000.00
Surplus (63)	11,429,172.66
Capital and surplus (63)	14,429,172.66
Total net premiums (23)	19,214,638.37
Illinois premiums (101)	1,886,668.70
Percentage of Illinois business	9.88%
Capital and surplus attributable to Illinois, being 9.88% of $14,428,172.66	1,385,602.25
Illinois capital and surplus debased to 30%	415,680.67
Tax rate for 1924	9.05%
Tax on $415,680.67 computed at 9.05%	37,519.50
Tax for Cook County as fixed by court below (Printed Record, p. 38)	9,231.00

NATIONAL FIRE INSURANCE COMPANY.

1926.

Total assets (57)	$41,377,484.18
Total liabilities (69)	26,703,531.64
Unearned premiums (69)	21,710,147.81
Paid up capital (69)	3,000,000.00
Surplus (69)	11,673,952.46
Capital and surplus (69)	14,673,952.46
Total net premiums (23)	22,304,633.61
Illinois premiums (107)	2,258,324.80
Percentage of Illinois business	10.13%
Capital and surplus attributable to Illinois, being 10.13% of $14,673,952.46	1,486,471.13
Illinois capital and surplus debased to 30%	445,941.33
Tax rate for 1926	9.29%
Tax on $445,941.33 computed at 9.29%	41,427.95
Tax for Cook County as fixed by the court below	10,497.00

As above stated the National Fire Insurance Company is one of the companies on whose behalf the present appeal is being prosecuted.

The foregoing figures are not to be understood as being mathematically accurate so far as the amounts of taxes for the respective years are concerned. It is impossible to make them so for the following reasons:

The figures representing the receipts, expenses, income, etc., are for the respective calendar years commencing January 1, while the taxes are for the tax years commencing May 1. So, too, the taxes fixed by the court below represent only the taxes for Cook County and do not include any for the remainder of the State. But as it is a well known fact that of the total insurance written in the State by the seventeen companies approximately 80% is written in Cook County, the figures above given demonstrate clearly that the net receipts taxes imposed upon the fire insurance companies are much less than would be imposed

upon them if they were taxed upon the portion of their capital used in their Illinois business. The percentage of Cook County business differs as to the different companies. Some companies receive more than 80% of their premiums in Cook County while others receive less.

Certainly, unless we are to say they should not contribute at all to the public revenue by way of taxes, there is no possible theory upon which it can be held that the tax imposed by the judgment of the court below was excessive.

The appellant, had it seen fit, could have shown the exact figures as to the percentage of its business each year ending April 30 transacted in Illinois, the proportion transacted in Cook County and all other figures necessary for the ascertainment of the exact facts. If the precise figures were necessary for the ascertainment of the justice of the tax the burden was upon appellant to show them.

Other interesting facts may be gathered from these reports among which are the following:

The total number of Illinois companies transacting business in Illinois in 1924 was 13. The total number of foreign companies was 242. The following figures relating to these companies are shown:

Page.		1924.
57	Total admitted assets of all companies	$1,604,171,308.88
49	Total admitted assets of Illinois companies	14,449,380.58
65	Paid up capital and surplus of all companies	677,359,811.84
58	Paid up capital and surplus of Illinois companies	8,482,855.05
27	Total premiums received by all companies in all states and countries	835,244,314.96

17	Total premiums received by Illinois companies in all states and countries	6,000,240.81
103	Total premiums received by all companies in Illinois	58,258,290.26
95	Total premiums received by Illinois companies in Illinois	1,640,269.19
	Percentage of Illinois business, transacted by Illinois companies	2.81%
	Percentage of Illinois business transacted by foreign companies	97.19%
56	Loans on bonds, mortgages and collateral and bonds and stocks owned by all companies	1,231,097,471.10
49	Loans on bonds, mortgages and collateral and bonds and stocks owned by Illinois companies	11,349,592.55

The total number of Illinois companies transacting business in Illinois in 1925 was 14. The total number of foreign companies was 253. The following is a statement showing the percentage of Illinois business transacted by Illinois companies and the percentage transacted by foreign companies:

1925.

105	Total premiums received in Illinois by all companies	$65,817,824.22
97	Total premiums received in Illinois by Illinois companies	1,562,920.23
	Percentage transacted by Illinois companies	2.37%
	Percentage transacted by foreign companies	97.63%

The total number of Illinois companies transacting business in Illinois in 1926 was 15. The total number of foreign companies was 250. The following is a statement showing the percentage of Illinois business transacted by Illinois

companies and the percentage transacted by foreign companies:

1926.

115	Total premiums received in Illinois by all companies	$67,753,787.31
103	Total premiums received in Illinois by Illinois companies	1,208,737.53
	Percentage transacted by Illinois companies	1.78%
	Percentage transacted by foreign companies	98.22%

Of interest also are the following statistics with respect to some of the leading American companies doing business in Illinois in 1924:

AETNA INSURANCE COMPANY OF HARTFORD.

Total admitted assets	$45,008,961.81
Capital and surplus	16,429,128.17
Total premiums received	24,946,215.62
Illinois premiums received	2,345,915.58
Percentage of Illinois premiums	9.42%
9.42% of capital and surplus	1,547,616.80

AMERICAN INSURANCE COMPANY OF NEWARK.

Total admitted assets	$22,252,507.69
Capital and surplus	7,683,817.57
Total premiums received	12,129,172.99
Illinois premiums received	1,746,223.69
Percentage of Illinois premiums	14.43%
14.43% of capital and surplus	1,087,508.00

AUTOMOBILE INSURANCE COMPANY OF HARTFORD.

Total admitted assets	$21,857,151.50
Capital and surplus	4,538,414.05
Total premiums received	30,085,492.65
Illinois premiums received	1,685,756.31
Percentage of Illinois premiums	5.62%
5.62% of capital and surplus	255,168.76

CONTINENTAL INSURANCE COMPANY OF NEW YORK.

Total admitted assets	$57,462,940.10
Capital and surplus	20,744,601.97
Total premiums received	20,889,037.44
Illinois premiums received	1,705,580.64
Percentage of Illinois premiums	8.15%
8.15% of capital and surplus	1,690,685.06

HARTFORD FIRE INSURANCE COMPANY OF HARTFORD.

Total admitted assets	$78,027,872.42
Capital and surplus	15,483,771.34
Total premiums received	56,384,485.51
Illinois premiums received	3,114,592.01
Percentage of Illinois premiums	5.52%
5.52% of capital and surplus	854,694.15

HOME INSURANCE COMPANY OF NEW YORK.

Total admitted assets	$84,980,279.11
Capital and surplus	37,499,861.96
Total premiums received	46,596,815.39
Illinois premiums received	2,196,942.68
Percentage of Illinois premiums	4.71%
4.71% of capital and surplus	1,766,243.48

INSURANCE COMPANY OF NORTH AMERICA.

Total admitted assets	$53,667,924.28
Capital and surplus	24,042,045.99
Total premiums received	28,441,553.21
Illinois premiums received	1,977,796.86
Percentage of Illinois premiums	6.99%
6.99% of capital and surplus	1,680,532.87

NATIONAL FIRE INSURANCE COMPANY OF HARTFORD.

Total admitted assets	$36,044,151.77
Capital and surplus	13,972,349.08
Total premiums received	17,718,242.35
Illinois premiums received	1,655,733.09
Percentage of Illinois premiums	9.34%
9.34% of capital and surplus	1,304,817.40

Thus there are eight of these foreign fire insurance companies each of which collects more premiums in Illinois than do the entire thirteen Illinois companies and there are four Hartford companies which collect in Illinois $8,801,996.99, whereas the Illinois companies only collect $1,640,269.19.

We have not deemed it necessary to add to the length of our argument figures covering the entire five years now in question. If the figures for 1924, 1925 and 1926, which we have above given are not fairly representative of the entire five years counsel for appellant can say so and supply the additional facts which they consider material.

When we consider the immense amount of money which those companies take out of the State in the form of unearned premiums and keep on hand for investment until they are called upon to pay losses it would seem plain that they should be subjected to some method of taxation. Unless the court can point out some more equitable method it will not be in a position to condemn the net receipts tax now in question as being unjustly discriminatory as between domestic fire insurance companies and foreign fire insurance companies.

Finally upon this point, if appellant insists upon a strict and accurate assessment which will secure perfect equality, we suggest that a foreign fire insurance company, when it becomes what Chief Justice Taft calls a *quasi* citizen of Illinois, be taxed as any domestic fire insurance company which is a simon pure citizen, that is upon the value of all its property no matter where situated.

V.

A fairer method of taxing the foreign insurance companies would be a capital stock tax.

As already suggested (*ante*, p. 24), no injustice would result to the insurance company by applying the tax rate to such a proportion of its capital stock and surplus as its Illinois premiums bear to its total premiums. Another method would be to apply the tax rate to such a proportion of the market value of its capital stock as its Illinois premiums bear to its total premiums.

The taxation in Illinois of a domestic fire insurance company is based upon the value of its capital stock including its good will. If one of these foreign fire insurance companies, such for instance as the National Fire Insurance Company, were so taxed it would be taxed upon the value of its entire capital stock, which would include the value of its good will, not withstanding 90 per cent of its total premium receipts were received from business outside of the State of Illinois. That company is a Connecticut corporation, its home office being at Hartford. We may safely assume that its full value assessments made in that state fairly represented the values of its capital stock.

We have not been able to ascertain the company's full Connecticut assessments for all of the years now in question, but have ascertained those for the years 1926 and 1927. They were $20,700,000 in 1926 and $25,350,000 in 1927. The capital and surplus amounted to $14,673,952.46 in 1926 and to $17,525,817.16 in 1927 (Insurance Report for 1927, p. 64).

Comparing the actual capital and surplus in each of these years with the full value Connecticut assessment for the same years the results would be as follows:

1926

Illinois Assessment on 10.13% of $14,673,952.46 of capital and surplus debased to 30% ..... $ 445,941.33
Connecticut assessment on 10.13% of $20,700,000 debased to 30% ..... $ 629,073.00

1927

Illinois assessment on 10.9% of $17,525,817.16 of capital and surplus debased to 60% $1,146,188.40
Connecticut assessment on 10.9% of $25,350,000 debased to 60% $1,657,890.00

The excess of the Connecticut assessments over and above the capital stock and surplus represents *good will*. The good will does not represent merely *Connecticut* good will. Part of it is the good will which the company enjoys in *Illinois* which in 1926 was 10.13% and in 1927 was 10.9%.

VI.

In determining whether the tax on net receipts is illegally discriminatory, the privilege tax imposed by the Act of 1919 must be ignored.

In the *Hanover Case*, 272 U. S. 510, 511, the court said:

> "With respect to the 'admission fee,' so to speak, which the foreign corporation must pay to become a quasi citizen of the state and entitled to equal privileges with citizens of the state, the measure of the burden is in the discretion of the state and any inequality as between the foreign corporation and the domestic corporation in that regard does not come within the inhibition of the Fourteenth Amendment; but after its admission, the foreign corporation stands equal

and is to be classified with domestic corporations of the same kind."

Under the privilege tax act of 1919 the admission fee was fixed at 2% of the gross premiums less deductions of returned premiums, or, in other words, net premiums. The Illinois Legislature might have fixed this "admission fee" at 6% of the net premiums, and had it done so, the admission fees paid by appellant for the years 1924, 1925 and 1926 would have been approximately as follows:

For 1924, 6% of $413,694.43	$24,821.66
For 1925, 6% of $366,432.52	21,985.95
For 1926, 6% of $275,031.47	16,501.88

The taxes fixed by the court below for these years were as follows:

For 1924	$3,528.00
For 1925	4,072.00
For 1926	2,694.00

These figures, of course, are not mathematically accurate for the reasons already stated (*ante*, pp. 31-32), but they are sufficiently so for purposes of illustration. They show quite plainly the futility of any attempt of these foreign fire insurance companies to evade the payment of such taxes as the Illinois Legislature may consider fair and just regardless of what may be the views of the courts. If these companies should be dissatisfied with treatment they receive they will not be obliged to transact business in Illinois. It is to the advantage of the property owners of Illinois that foreign companies should do business in the state and that is a sufficient guaranty that they will receive fair treatment, and the fact that over 200 of them have transacted business in Illinois for fifty years and 190 of them are content to pay their taxes is quite convincing evidence that the taxes are not unjust.

Furthermore while the insurance companies deliver the tax money to the collectors the real taxpayers are those who buy the insurance. As is well known tax rates are given consideration when their premium rates are fixed by the companies and approved by the superintendents of insurance. Appellant has received from its policyholders the taxes for the years in question and has received the income from the money thus received from four to seven years.

VII.

Permitting casualty companies to do some of the kinds of business done by fire insurance companies cannot be given the effect of invalidating Section 30 of the Act of 1869.

Down to 1899, which was 30 years after Section 30 of the Act of 1869 went into effect, there was no statute in Illinois authorizing any other than fire, marine and inland navigation insurance companies to engage in any of the kinds of insurance now in question. By acts passed in 1879 and 1885, in addition to fire, marine and inland navigation insurance, these companies were also authorized to engage in insurance against loss by lightning, tornadoes, wind storms, hail storms and cyclones. That was the situation when the Casualty Insurance Company Act was adopted in 1899. Prior to that time the question of discrimination was one solely between the domestic fire insurance companies and the foreign fire insurance companies. According to the decision in the *Hanover Case*, 272 U. S. 473, there was then no unlawful discrimination in favor of the domestic companies which were taxed upon their capital stock, including the property in which their net receipts were invested, and against the foreign compa-

nies which were taxed on their net receipts but not upon their capital stock.

The question then is, does the fact that the legislature subsequently in the Casualty Insurance Act authorized foreign casualty companies to transact some of the same kinds of business authorized to be transacted by foreign fire insurance companies but failed to provide that the casualty companies should be taxed upon their net receipts from such business render unconstitutional Section 30 of the Act of 1869?

This question must be answered in the negative for several reasons.

First. Foreign fire insurance companies being engaged in business only a small part of which is engaged in by casualty companies, and being differently organized, there may be reasons for taxing them on some of the classes of receipts which casualty companies receive which do not exist with respect to casualty companies. Without evidence showing all the circumstances the court could not, as a matter of law, say that the omission to tax the receipts of the casualty companies produced illegal discrimination. A correct decision would require the court to be put in possession of knowledge of all the circumstances the legislature had to consider when they passed the law. No proof whatever is offered by appellant upon this question.

Second. The Fourteenth Amendment was not enacted for the sole benefit of foreign corporations. While it forbids unjust discrimination in favor of domestic corporations, and against foreign corporations, it likewise forbids unjust discrimination in favor of foreign corporations and against domestic corporations. The court having de-

cided in the *Hanover Case* that the net receipts tax, when extended upon a proper assessment, produces substantial equality between domestic and foreign fire insurance corporations it follows that relieving the foreign fire insurance corporations of the tax will result in substantial inequality to the disadvantage of the domestic fire insurance corporations and thus deprive them of the equal protection of the laws.

Third. Some form of taxation of foreign fire insurance companies is required not only to secure equality, or approximate equality, of treatment as betwen them and domestic fire insurance companies, but also to secure equality, or approximate equality, of treatment to all other taxpayers. Equality of treatment is the constitutional right of all taxpayers, whether they are insurance companies, other corporations or individuals. While the methods of taxation of domestic fire insurance companies, on the one side, and other domestic corporations and individuals, on the other side, are different, they are supposed to result in equality and are so treated.

Assuming, then, that the net receipts tax results in equality as between domestic fire insurance companies and foreign fire insurance companies, it also results in equality as between the foreign fire insurance companies on the one side, and individuals on the other side. Declaring the net receipts tax void, therefore, must result of depriving all individual taxpayers of the right of equality of taxation to which the Fourteenth Amendment entitles them.

Fourth. When there is in force a valid law resulting in substantial equality of taxation and a subsequent law is passed which, if given effect, would destroy that substantial equality, it is the new law and not the old law which should be declared unconstitutional.

Is there any obstacle, constitutional or otherwise, in the way of the adoption of such a course? Whether a law is in violation of the Fourteenth Amendment must be determined by what will be its effect. If, when construed in connection with other laws in force at the time it is enacted, the operation of a subsequent law will result in a violation of the Fourteenth Amendment, how can it be treated as a valid law?

Suppose that any state should pass a law authorizing a foreign corporation to come into the state and transact business in competition with domestic corporations of the same kind. Suppose that law should make no provision for taxing the foreign corporation upon its business so transacted or otherwise although the domestic corporations are taxed upon their business by being taxed upon their capital stock. Suppose a domestic corporation should appear in this court demanding relief under the equal protection clause of the Fourteenth Amendment and ask to have the law declared invalid? What would the court say?

Could the court, with a reasonable regard for consistency, say that although the taxation of a foreign corporation in a particular manner results in equality of treatment of a domestic company, the state is at liberty to omit that taxation altogether and thus dispense with such equality?

The court in the *Hanover Case* decided that taxing foreign fire insurance companies upon their net receipts, when the tax rate was computed upon the same basis of value applied in taxing other property did not result in inequality. If equality results from the tax it follows that abolishing the tax would result in inequality and it would make no difference whether the tax were abolished

by an express repeal of the taxing law or by the enactment of some other law which did not mention the tax but operated as a repeal by implication. *In this case no repeal by implication can be claimed inasmuch as the privilege Tax Act of 1919 expressly provides that it shall not affect the tax provided for by Section 30 of the Act of 1869.*

Fifth. As casualty insurance companies are different from fire insurance companies in their organization and in their methods of transacting business, those differences may justify differences in methods of taxation. It was incumbent upon appellant in any event to bring before the court all the facts relating to the organization of these companies, their methods of transacting business, the amount of their business, the profits derived therefrom, their unearned premiums and what disposition was made of them and all other facts which might shed light upon the justice or injustice of a tax upon their net receipts.

Appellant, however, contents itself with merely showing such casualty insurance companies are in existence and are doing business in Illinois, a part of which fire insurance companies are authorized to transact. This is not enough. It was the duty of appellant, if it contended that the law in its practical operation was unjustly discriminatory against casualty insurance companies, to prove that fact by evidence. This follows from the court's previous decisions.

Lindsley v. *National Carbonic Gas Co.*, 220 U. S. 61.

Quong Wing v. *Kirkendall*, 223 U. S. 58, 59.

Citizens Nat. Bk v. *Dunn*, 257 U. S. 99.

Interstate Busses Corp. v. *Holyoke*, 273 U. S. 45.
Weaver v. *Palmer Bros. Co.* 270 U. S. 402.
Minnesota Rate Cases, 230 U. S. 352.

VIII.

Permitting casualty companies to do some of the kinds of business done by fire insurance companies cannot be given the effect of relieving foreign fire insurance companies from the payment of the net receipts tax on their receipts from the kinds of business done by casualty companies.

The main purpose sought to be accomplished by appellant by the prosecution of this appeal is to secure a decision of this court that while foreign fire insurance companies may be taxed under Section 30 of the Act of 1869 on their net receipts from fire, marine and inland navigation insurance, they cannot be taxed on their net receipts from automobile insurance and insurance against losses by tornadoes, windstorms, hail and sprinkler leakage. But such a result is inadmissible.

According to the decision in the *Hanover Case* the taxation of the foreign fire insurance companies on their net receipts from fire, marine and inland navigation insurance put them upon a level with domestic fire insurance companies, and, of course, it also put the domestic companies upon a level with the foreign companies. If such taxation had not been imposed upon the foreign companies the domestic companies would have been discriminated against and the foreign companies would have been given an advantage forbidden by the Fourteenth Amendment.

Now the same requirement of equality which justified the taxation of the foreign fire insurance companies upon their net receipts from fire, marine, and inland navigation

insurance required that they should be taxed upon their net receipts from the additional kinds of insurance. The domestic companies were taxed upon their net receipts from such insurance, or what they were invested in, just as they were upon their receipts from fire insurance, either through their capital stock tax or otherwise, and hence not to have taxed the foreign companies on their receipts therefrom would have been unjustly discriminatory against the domestic companies. It would have deprived the domestic companies of the equal protection of the laws.

IX.

The complaint that non-incorporated companies, individuals, and Lloyds were not taxed on their net receipts is of no force.

Non-incorporated companies are not corporations, but merely associations of individuals and only taxable as individuals. No capital stock tax can be imposed upon them. If they are residents of this state they are assessed and taxed as other individuals are assessed and taxed. If they are non-residents and merely transact business in this state through agents their agents are assessed and taxed in the same manner as agents of other individuals are assessed and taxed. There is the same difference in respect to taxation between these individuals and incorporated fire insurance companies that there is between other individuals and other incorporated companies.

In *Roach & Co.* v. *Harding*, 348 Ill. 454, the court held that an association such as an insurance exchange was not a corporation but was a legal entity and that the agent having actual control of its credits which were intangible,

or of its tangible personal property, was required to list them for taxation.

To impose a net receipts tax upon an individual resident in the state in addition to a property tax, while imposing only a property tax upon a domestic fire insurance company, would be a clear violation of the Fourteenth Amendment.

A law imposing a tax upon an individual who was a non-resident of the state when the same kind of a tax was not imposed upon a resident individual would likewise be unconstitutional. It would violate Section 2 of Article IV of the United States Constitution.

Allgeyer v. *Louisiana*, 165 U. S. 578.

St. Louis Cotton Compress Co. v. *Arkansas*, 260 U. S. 34.

Barnes v. *People*, 168 Ill. 425.

The facts relied upon as to these non-incorporated companies, individuals, Lloyds, etc., are embodied in a stipulation (Printed Record, pp. 98, 99), which recites that during the years in question they were engaged in transacting fire, marine and inland navigation insurance in competition with the foreign fire insurancee ompanies, and that

> "said non-incorporated foreign associations, individuals, Lloyds and domestic insurance corporations during said years *were not assessed for taxation upon their several net receipts covering fire, marine and inland navigation insurance risks* assumed by them in Illinois, or *upon any real or personal property other than net receipts* like all other property owners and taxpayers, and that said foreign stock fire insurance companies were assessed for taxation upon their net receipts derived from such competitive business; that foreign casualty companies also carried on such competitive business *and were not taxed on their net receipts derived therefrom.*"

It will be observed that these allegations fail to allege the following:

1. That these non-incorporated companies, etc. *had any net receipts* from such fire, marine and inland navigation business which were subject to taxation.

2. That these non-incorporated companies *had any real or personal property, other than net receipts,* subject to taxation.

Furthermore, it is nowhere shown *why,* if they had any such net receipts or real or personal property, they were not assessed and taxed thereon. If they had any such property the failure of the assessing officers to assess and tax it may have been the fault of such assessing officers or the fraud of such non-incorporated companies.

If, as a matter of fact, these non-incorporated companies, including Lloyds, did acquire any net receipts from fire insurance, appellant should have made proof of that fact, together with the amounts received. The amounts received, if any, may have been so small as to have come within the maxim *de minimis non curat lex.* Appellant did insert in its Appendix (pp. 69-70) a table of receipts of casualty companies from motor vehicle insurance and sprinkler leakage insurance, but none from fire, marine and inland navigation insurance.

Appellant states that these non-incorporated companies, during the years in question, were *lawfully* carrying on fire, marine and inland navigation insurance business. They could only *lawfully* do this by complying with the following provisions of the Act of 1911 (Laws of 1911, pp. 371-373) which was in force during these years and Section 4 of which provided as follows:

"Every association, partnership, individual or aggregation of indiivduals, so assuming liability upon property not owned by its members shall, so far as the same shall be applicable to the business transacted, be subject to the *same* requirements, fees and *taxes* except as to capital stock and deposits, *as are by law imposed upon corporations engaged in the same or similar business in this State.*"

The passage of a law for taxing these non-incorporated companies in accordance with the same requirements as those imposed upon corporations engaged in the same or similar business would necessarily relieve the law in question from the objection that it violated the Fourteenth Amendment even if the law were not obeyed. *A tax law cannot be overturned simply because some persons escape taxation although the law requires them to be taxed.*

X.

The question of the omission to tax casualty companies does not affect the taxes for the years 1923 to 1926, inclusive.

The evidence (Printed Record, pp. ....) shows that the returns made by the insurance companies for the years 1923 to 1926, inclusive, included only premiums from fire, marine and inland navigation insurance. Consequently appellant cannot complain that Section 30 of the Act of 1869 is invalid because casualty companies were not taxed even if otherwise such complaint would be valid.

Furthermore, appellant and the other seventeen complaining companies made their returns voluntarily and asked for their acceptance by the Board of Review (Printed Record, p. 7). While the Board of Review refused to accept them the court below held them valid and fixed the taxes accordingly. Its judgment as to the taxes

for those years must therefore be upheld unless Section 30 of the Act of 1869 is unconstitutional however construed.

XI.

The opinion of the Supreme Court of Illinois in People ex rel. v. Fayart is of no weight as authority in the instant case.

An opinion of the Supreme Court of Illinois, which that court subsequently repudiated, is, of course, of no force. A statement of facts in reference to the *Fayart Case,* however, is justified in view of what is said about it in appellant's brief (pp. 47, 48). The facts as to that case, briefly stated, are as follows:

In 1924, at about the same time that the Hanover Fire Insurance Company and ten other foreign fire insurance companies filed their bills in chancery in the Superior Court of Cook County to enjoin the net receipts tax for the year 1923, the People of the State of Illinois instituted an original action in the Supreme Court of Illinois for a mandamus to compel an agent of a foreign fire insurance company to make returns of the company's net receipts as required by Section 30 of the Act of 1869. The real purpose of that suit was to secure from the Supreme Court of Illinois a decision as to what deductions should be made from gross receipts in ascertaining net receipts.

From the decision in *People* v. *Barrett,* 309 Ill. 53, Mr. Justice Duncan had dissented without stating the grounds of his dissent. As subsequently appeared, however, from his dissenting opinion in *Hanover Fire Insurance Company* v. *Carr,* 317 Ill. 366, the ground of his dissent was that "net receipts" in Section 30 of the Act of 1869 meant "net annual gains or net profits," which, of course, would mean

gross receipts after deducting not only operating expenses but also fire and other losses. The *Fayart Case* and *Hanover Fire Insurance Company* v. *Carr*, 317 Ill. 366, both came before the Supreme Court of Illinois at the October Term, 1924. In the division of the business of the court the preparation of an opinion in the *Fayart Case* was assigned to Mr. Justice Duncan, while the preparation of the opinion in *Hanover Fire Insurance Company* v. *Carr* was assigned to Mr. Justice Stone and the opinion prepared by him was duly filed on April 24, 1925.

On June 22, 1927, after the reversal by this court in *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, of the decision of the Supreme Court of Illinois in *Hanover Fire Insurance Company* v. *Carr*, the Supreme Court of Illinois, under this court's remanding order, filed its opinion *Hanover Fire Insurance Company* v. *Harding*, 327 Ill. 590, overruling its prior decisions in the *Kent* and *Barrett Cases* and sustaining the validity of Section 30 of the Act of 1869 when construed as authorizing a tax extended upon the net receipts assessed upon the same basis of value as other personal property. Mr. Justice Duncan was one of the four judges concurring in that decision.

Acting under that decision the assessments now in question were made by the Board of Review and, the taxes being extended thereon, actions at law, including the 17 now before this court, were brought against 208 foreign fire insurance companies to recover the taxes. Shortly after the commencement of these suits negotiations were entered into between the representatives of the taxing bodies and the insurance companies for the settlement of those suits and those negotiations had resulted on December 16, 1928, in an agreement between the attorneys for the respective parties to advise

the settlement of the litigation by the payment by the insurance companies of substantially 50 per cent of the taxes. Two days later, however, to the surprise of all parties, a 40-page opinion, written by Mr. Justice Duncan, was filed in the *Fayart Case,* declaring Section 30 of the Act of 1869 to be in violation of the 14th Amendment.

There was no dissent from that opinion. Immediately, upon behalf of the petitioner in that case, a petition for rehearing, consisting of 81 pages, was filed in the action. At the February Term, 1929, the court struck the petition from the files for reasons not stated, but probably because it violated the court's rehearing rule, and, immediately after having done so, granted a rehearing of the court's own motion. The petitioner, the People of the State of Illinois, thereupon, as it had a right to do, dismissed the petition and that ended that particular case. Shortly after the dismissal of the opinion, negotiations were renewed between the attorneys of the respective parties, with the result that, as to 190 of the 208 foreign fire insurance companies, the tentative agreement for settlements on the basis of the payment of approximately 50 per cent of the taxes were carried through, the taxes were paid and those companies have complied with Section 30 of the Act of 1869 in subsequent years.

The reason for the dismissal of the petition for a mandamus by the petitioner was that the court, taking into account its former decisions and disregarding its decision in the *Fayart Case,* stood four to three in favor of sustaining the law, but one of the four, Mr. Justice Duncan, was of the opinion that net receipts should be construed as net profits ascertained after deducting from gross receipts both operating expenses and other losses, which construction made the law of practically no value.

The court in the *Fayart Case,* having stricken the petition for rehearing from the files, and under its rules there being no right on the part of the parties to file additional arguments, and the arguments already on file not having discussed the questions relating to the constitutionality of the law, the taxing bodies deemed it prudent not to run the risk of a decision by the court in that case, but rather to wait until a future case would arise when the questions involved could be fully argued.

The disposition of the *Fayart Case* was followed by the decision in *People* v. *Franklin National Insurance Company,* 343 Ill. 326, in which the constitutionality of the Act of 1869 was unanimously sustained. That was followed by the decision in the *Concordia Case* now before the court. The opinion in both cases were concurred in by all the judges, including those that dissented in *Hanover Fire Insurance Co.* v. *Carr,* 317 Ill. 366, and in *Hanover Fire Insurance Co.* v. *Harding,* 327 Ill. 590.

XII.

The taxes for the year 1927 are valid.

Counsel for appellant (Brief, pp. 45-46) say:

> "The method of making the 1927 assessment in 1928 was the following:
>
> "The Board of Review took the gross receipts returned, and instead of deducting the actual operating expenses shown under oath by appellant's return (in the case of appellant 54% of gross receipts), deducted 30% of the aggregate gross receipts to cover operating expenses and extended the remainder without debasement, scaling or equalization as the estimated net receipts for the year 1927."

This same statement, in substance, was made in the brief for appellant in the Supreme Court of Illinois and was

there so clearly shown to be untrue that it was abandoned by appellant's counsel and, for that reason, was not noticed in that court's opinion. The real facts were as follows:

The taxing bodies claimed before the Board of Review that appellant's gross receipts returns were about 25% less than they should have been had not appellant omitted from its return all gross receipts other than those from fire, marine and inland navigation insurance. The Board of Review held this claim to be good and therefore treated appellant's gross receipts returned as being only 75% of what they should have been, or, in other words, treated the amount of the gross receipts returned as being what the actual gross receipts would be when properly debased and equalized.

The debased and equalized gross receipts having been thus arrived at there was deducted therefrom 30% on account of expenses, that being the percentage which the Board had previously fixed. The evidence showed that was sufficient to cover the agents' commissions, the agents paying their own expenses (Printed Record, pp. 101, 104).

In other words, the Board, being satisfied there was an omission from the return of receipts which should have been returned and not being able to secure any information from appellant as to the exact amount, estimated the deficiency to amount to a proper debasement and equalization. The Board might, under the law, have penalized appellant to the extent of 50 per cent had they seen fit to do so because of appellant's refusal to make a proper return.

At the time the assessment proceedings took place it was the settled rule that a property owner who, when

called upon to give the Board necessary information which it called for, refused to do so, could not complain that the assessment was excessive, and that, in any event, a property owner who refused to furnish the necessary information could not complain of an excessive assessment without making affirmative proof of the actual value of the property assessed. *Pratt* v. *Raymond*, 188 Ill. 469; *Earl & Wilson* v. *Raymond*, 188 Ill. 15; *American Express Co.* v. *Raymond*, 189 Ill. 232; *Leper* v. *Pulsifer*, 37 Ill. 110; *Cummings* v. *Weber*, 218 Ill. 521; *Adsit* v. *Leib*, 76 Ill. 198; *Peirce* v. *Carloch*, 224 Ill. 608; *Sanitary District* v. *Young*, 285 Ill. 351; *Jeffery Apartment Building Corporation* v. *Harding*, 347 Ill. 336, 341.

In appellant's brief (p. 49) it is also said:

> "Once the net receipts were arrived at by any method, appellant was entitled to have the calculated amount debased to 60 per cent like all other personal property in Cook County for the year 1927."

This is fully answered by the uniform ruling of the Supreme Court of Illinois that one who refuses to furnish the information required by the assessor can have no relief from an excessive assessment without proving actual fraud and supplementing that proof by proof of the actual value of the property assessed. Such proof could not be made by a sworn return not made in compliance with law. Besides, as already stated, the evidence shows that the only receipts returned were those from fire, marine and inland navigation insurance.

Excessive valuation of property cannot be established without proof of what the value actually was.

Sanitary District v. *Young*, 285 Ill. 351.

Jeffery Apartment Bldg. Corp. v. *Harding*, 347 Ill. 336, 341.

Conclusion.

We respectfully submit that the objections made by appellant to the judgment of the Supreme Court of Illinois are not well taken and that its judgment should be affirmed.

THOMAS J. COURTNEY,
LEON HORNSTEIN,
LOUIS H. GEIMAN,
HARRIS F. WILLIAMS,
HIRAM T. GILBERT,
Counsel for Appellee.

APPENDIX.

I.

Assignments of error in Hanover Fire Insurance Company v. Harding, 272 U. S. 494.

And now comes the Hanover Fire Insurance Company, a corporation, plaintiff in error in the above entitled cause, and avers and shows that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Illinois in the above entitled cause, the Supreme Court of the State of Illinois erred to the grievous injury and wrong of the plaintiff herein, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to-wit:

(1) The Supreme Court of the State of Illinois erred in adjudicating and deciding that Section 30 of an act of the General Assembly of the State of Illinois entitled, "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved and in force March 11, 1869, as amended by an act approved May 31, 1879, in force July 1, 1879, was and is a good and valid enactment and was and is not repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States;

(2) The Supreme Court of the State of Illinois erred in denying the claim of plaintiff in error that said Section 30 was repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides:

(fol. 175) "Nor shall any state * * * deny to any person within its jurisdiction, the equal protection of the laws,"

in that plaintiff in error, being a corporation, organized under the insurance laws of the State of New York and transacting its business of insurance in the State of Illinois after having paid to said State of Illinois a privilege tax for such purpose, and secured the license, permission and authority of the State of Illinois so to transact said business of insurance, was subject to a tax on its business of insurance while domestic insurance corporations of the State of Illinois, casualty insurance companies organized under the laws of the State of Illinois and under the laws of foreign states and governments, and doing business in the State of Illinois, partnerships, Lloyds, individuals and other insurers doing identically the same kind of business of insurance as plaintiff in error, were and are not subject to a tax on the business of insurance conducted by such other insurers, respectively:

II.

Extracts from bill of complaint in Hanover Fire Insurance Company v. Harding, 272 U. S. 494.

"(9) A. That the complainant is a corporation with capital stock and is authorized and empowered by its charter and articles of incorporation to insure those having insurable interest in (a) property, (whether upon land or water), (b) rents, and use and occupancy, (c) against hazards of fire, lightning, hail, tempest, earthquake, explosion (except upon steam boilers, and pipes, fly wheels, engines and machinery connected therewith or operated thereby), water, breakage, leakage, risks o focean, lake, river, canal and inland (fol. 16) navigation, transportation, hazards of windstorms, tornadoes, cyclones, transportation and, in addition,

upon automobiles or motor vehicles, against the hazards of theft and collision;

"That complainant, during the year ending April 30, A. D. 1923, exercised its said corporate powers aforementioned in the State of Illinois, and collected and received premiums upon policies of insurance by it written through its said Cook County agencies, as aforesaid, and against the risks, as aforesaid, which said action of it, the complainant, was in nowise prohibited by the said State of Illinois and was consistent with the laws and policy of said State;

"B. That the statutes of the State of Illinois provide for the chartering and organizing under the laws of said State of fire, marine and inland navigation insurance companies having their domicile in the State of Illinois (hereinafter referred to as domestic fire insurance companies), which said domestic fire insurance companies are authorized and empowered to organize as stock companies issuing capital stock to shareholders: that domestic fire insurance companies are authorized and empowered by the laws of the State of Illinois, and at all the times above mentioned were authorized and empowered, to make insurance on the same kinds and character of property and against the same hazards and risks as foreign fire insurance companies; that during all of said time, from the 1st day of May, A. D. 1922, to and including the 30th day of April, A. D. 1923, both domestic fire insurance companies and foreign fire insurance companies made insurance in the State of Illinois upon property against the hazards and risks, as aforesaid, and upon the same character of hazards and risks; that domestic fire insurance companies and foreign fire insurance companies charged, demanded and received (fol. 17) and during all of said period mentioned did charge, demand and receive the same, or approximately the same, premium as foreign fire insurance companies charged, demanded and received for insurance upon the same property, or for the same kind, form, character, or type of hazard or risk; that foreign fire insurance companies are in direct competition with domestic fire insurance companies in making insurance upon prop-

erty and against the hazards and risks hereinbefore stated;

"C. That the statutes of the State of Illinois provide for the chartering and forming of companies with capital stock for the purpose of doing a casualty insurance business (which companies so organized and domiciled within this State are hereinafter referred to as domestic casualty insurance companies); and for the licensing of casualty insurance companies with a capital stock, organized under the laws of foreign States and Governments (hereinafter referred to as foreign casualty insurance companies) to transact the business of casualty insurance; that casualty insurance companies, both domestic and foreign, are authorized to, and do, in the State of Illinois, and during all of the period aforementioned did, within the said State, make insurance, among other things, upon automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any—the risks of fire, lightning, windstorm, tornadoes, cyclones, explosions, hailstorms, transportation by land or by water, theft and collision; and did also make insurance, and still do, against loss or damage by water, caused by the breakage or leakage of sprinklers, pumps or other apparatus, water pipes (fol. 18), plumbing or other fixtures erected, used, or put in position for the purpose of extinguishing fires; against damage, loss or injury resulting from any cause whatsoever, from such sprinklers, pumps or other apparatus erected, used, or put in position for the purpose of extinguishing fires; to make insurance upon growing crops, live stock or other property against loss or damage by lightning, windstorms, hailstorms, and cyclones;

"That the powers so exercised and the authority so granted and the hazards so assumed by casualty insurance companies, domestic and foreign, are and each of such powers, authorizations and the insurance against such hazards respectively are and, during the period of one year prior to April 30, 1923, were exercised in the State of Illinois by complainant and by other foreign fire insurance companies; that casualty insurance companies, both domestic and foreign, do, and

during said entire period mentioned did, charge, demand and receive the same, or approximately the same, premiums as foreign fire insurance companies do and did charge, demand and receive for a like amount of insurance upon like property and upon like hazards of the kind above mentioned; that foreign fire insurance companies, including the complainant, are, and during said period mentioned were, in direct competition with casualty insurance companies, both domestic and foreign, in the business of making insurance on property of the kind, form, character, types and hazards described in this clause of this paragraph;

"That the aggregate amount of premiums received by complainant (fol. 19) and other foreign fire insurance companies for and on account of insuring property of the kind, form, and character and of the types and hazards in this clause of this paragraph referred to (and which may also be insured by casualty insurance companies, both domestic and foreign) constitutes a large and substantial percentage and part of its and their receipts in the State of Illinois and within the said County of Cook and Town of South Chicago collected by its and their respective agencies there being; that the aggregate amount of premiums received by casualty insurance companies, both domestic and foreign, for and on account of insuring property of the kind, form and character and of types and hazards in this paragraph referred to (and which may also be insured by foreign fire insurance companies) constitutes, and did constitute, a large and substantial percentage of the net receipts of casualty insurance companies, domestic and foreign, collected by their respective agencies established in the State of Illinois within the said County and town aforesaid; that during the year ending April 30, 1923, there were approximately 147 foreign casualty insurance companies licensed to do business in the State of Illinois, and during said time actually transacting business under said licenses within the State of Illinois; that among other things which may be insured, and during the said year ending April 30, 1923, were insured by foreign fire insurance companies and likewise insured by casualty insurance

companies domestic and foreign; are and were automobiles or other motor vehicles, stationary or operated under their own power, which were insured respectively by foreign fire insurance (fol. 20) companies and casualty insurance companies, both domestic and foreign, against risks and hazards of windstorms, tornadoes, cyclones, explosions, hailstorms, transportation by land or by water, theft or collision; that during said term there were approximately 950,000 automobiles and motor vehicles in the State of Illinois, and registered in the office of the Secretary of State under the provisions of the Motor Vehicle Law, a large part of which were located in the County of Cook and said Town of South Chicago; that foreign casualty insurance companies for the year A. D. 1923 received upwards of the sum of One Million Dollars in gross premiums for the insurance of automobiles and other motor vehicles against the risk of collision; that the complainant is informed and believes and so states the fact to be that foreign casualty companies doing business in the State of Illinois additionally received, during the year 1923, a sum not less than said sum so last mentioned in gross premiums for other types of insurance which they are so authorized to, and permitted to, and during said period of one year did, write by concurrent authority and power and by like permission of the State of Illinois so given to foreign casualty insurance (fol. 21) companies and so given to foreign fire insurance companies;

"That in a certain action instituted upon the relation of the City of Chicago, a municipal corporation, petitioner by an action for a mandamus against the members of the Board of Review of Cook County, Illinois, which said cause was No. 13899 in the Supreme Court of Illinois, the opinion of the court wherein is reported in Vol. 309 of the official reports of the decisions of the Supreme Court of Illinois at page 53 thereof, the said court did undertake to review and consider the nature and character of the tax undertaken to be imposed by said Section 30, and in which proceeding the constitutionality of said Act was not involved, nor was the complainant, or any other foreign fire insurance

company, any party thereto; that in the opinion in said cause rendered, the said Supreme Court did construe said Section 30 to be a business tax and not to be a privilege tax;

"That in and by said decision and other decisions of the Supreme Court of Illinois the said court did construe said Section 30 to impose a tax upon insurance when such insurance was, and is, written, placed and done by foreign fire insurance companies and to exempt from any tax thereunder insurance when written by any other insurers, whether domestic fire insurance companies, domestic or foreign (fol. 23) casualty insurance companies, by individuals, associations of individuals and groups of individuals or by groups of persons styling themselves Lloyds associations, or by any other entity whether natural or corporate;

"(11) That said Section 30 affords no warrant or authority for the assessment, extension or collection of said tax and is illegal, unconstitutional and void and of no force and effect, in that it violates Section 1 of Article IX of the Constitution of the State of Illinois, in that it is not a tax by general law, uniform as to the class upon which it operates;

"That it is in violation of Section 2 of Article II of the Constitution of the State of Illinois, because it deprives the complainant of liberty and deprives the complainant of property without due process of law;

"(12) That said Section 30 affords no warrant or authority for the assessment, extension or collection of said tax and is illegal, unconstitutional, void, and of no force and effect, in that it violates Section 1 of Article XIV of the Constitution of the United States, in that it denies to complainant the equal protection of the laws, and deprives it of liberty and deprives it of property without due process of law;

"(13) That said Section 30 affords no warrant or authority for the assessment, extension or collection of said tax, and is illegal, unconstitutional, void and of no force and effect, in that—violates Sections 9 and 10 of Article IX of the Constitution of the State of Illinois, in that it imposes a tax upon the inhabitants of a municipal corporation for local, corporate and mu-

nicipal purposes (fol. 24); (14) That even though said Section 30 should be a valid and constitutional enactment, yet the action of the Board of Review of Cook County in entering upon the assessment books of Cook County, in the Town of South Chicago, an assessment against the complainant for the full amount as found by the Board of Review as aforesaid, or any amount of the net receipts of the complainant as aforesaid was illegal, in excess of its jurisdiction, arbitrary and wholly unauthorized by law.

"(20) Forasmuch, therefore, as this complainant is without remedy in the premises except in a court of equity, where such matters are properly cognizable and relievable, and to the end that the said Patrick J. Carr, County Treasurer of the County of Cook in the State of Illinois, and ex officio County Collector of Cook County in the State of Illinois, who is made a party defendant to this bill, may make full, true and direct answer to the same (but not under oath, the answer under oath being hereby expressly waived); that, upon the final hearing hereof;

"(a) That the Court adjudge and decree that the assessments made against the net receipts of the complainant in the County of Cook and State of Illinois, and in the Town of South Chicago therein, and the taxes extended by the County Clerk of the County of Cook against such assessments, be declared void and held for naught, and said assessments and said extension be set aside and that the defendant, his deputies, clerks, attorneys, agents and servants be restrained and perpetually enjoined from demanding, collecting or (fol. 36) receiving said taxes, or any part thereof, and from levying upon or seizing any of the goods and chattels of the complainant or selling the same, or in any manner attempting to enforce the payment of said taxes, or any part thereof;

"(b) That, if a part only of said taxes should be found to be illegal and void, the relief hereinbefore prayed against the whole of said taxes may be granted as to so much thereof as shall be found by this court to be illegal and void, and in such case, the complainant stands ready and willing, and hereby offers to pay,

so much of said taxes on account of net receipts as may be held by this court to be legal and owing";

III.

Laws of New York.

The laws of New York in addition to provisions for filing papers, for copies of papers, etc., provisions for the issuance of certificates of authority, reciprocal or retaliatory provisions and provisions for fire department taxes, which in substantially the same form, are found in foreign insurance company tax laws of other states, contain the following:

> "Par. 34. Taxation of Foreign Corporations and Foreign Insurers. The capital of an insurance corporation incorporated under the laws of any state or country outside of the United States to the extent employed in the transaction of business in this state, and as determined and certified as prescribed by Section 27 of this chapter, shall be subject to taxation the same as the capital of a like domestic insurance corporation, to be levied, assessed and collected as prescribed by law, at such place in the state as it shall have its principal office. Every health or casualty insurance corporation incorporated by or organized under the laws of any government outside of the United States engaged in the transaction of the business of health or casualty insurance in this state under a certificate of authority from the superintendent of insurance shall, for the privilege of doing business in this state and in addition to any other taxes imposed for such privilege, annually, on or before the first day of April, pay to the superintendent of insurance a tax of two per centum on all premiums received in cash or otherwise by its attorneys or agents in this state during the year ending on the preceding thirty-first day of December, for business done at any time in this state on risks resident therein. Every life insurance corporation incorporated by or organized under the laws of any governments outside of the United

States engaged in the transaction of the business of life insurance in this state under a certificate of authority from the superintendent of insurance shall, for the privilege of doing business in this state, and in addition to any other taxes imposed for such privilege, annually, on or before the first day of April, pay to the superintendent of insurance, a tax of one per centum on all premiums received in cash or otherwise by its attorneys or agents in this state during the year ending on the preceding thirty-first day of December, for business done at any time in this state on risks resident therein.

"Every other foreign insurance corporation or foreign insurer authorized to transact in this state any of the kinds of insurance specified in Sections 110 or 150 of this chapter shall, for the privilege of doing business in this state and in addition to any other taxes imposed for such privilege, annually, on or before the first day of April, pay to the superintendent of insurance a tax of two per centum (or in case of a health or casualty insurance corporation incorporated under the laws of any other state of the United States, a tax of one per centum) upon the amount of all premiums, including reinsurance premiums, upon such insurances (except premiums for insurances and reinsurances on property or risks, other than automobiles, against loss or damage by fire and lightning) which have been received by, or agreed to be paid to, any such foreign insurance corporation or foreign insurer or any attorney or agent thereof, for any such insurance effected, or agreed to be effected, or procured within this state for the year ending on the preceding thirty-first day of December, provided that in the case of insurances, other than marine and inland navigation and transportation insurances, the tax shall be computed only upon the amount of all premiums received by or agreed to be paid to such foreign insurance corporations or foreign insurer or any attorney or agent thereof for insurances and reinsurances upon property or risks located or resident in this state" (Cahill's Consolidated Laws of New York, 1923, Chapter 30, Art. 3, page 1062).

IV.

Laws of New Jersey.

The following are the provisions of the Laws of New Jersey for the taxation of foreign insurance companies as set forth in the 1911-1924 Cumulative Supplement to the Compiled Statutes of New Jersey, Vol. 1, page 1853:

"Par. 99-65. Annual Report of Foreign Companies —Contents—Premium Tax. Every insurance company, other than life, of any other State or foreign country, transacting business in this State, shall, on or before the fifteenth day of February of each year, make to the Commissioner of Banking and Insurance a report, signed and sworn to by an officer of the company, or by its United States manager, if a company of a foreign country, stating the gross amount of premiums and premium deposits and assessments received by such company, and by each agent thereof, on business of the said company in this State for the preceding calendar year, including all premiums and premium deposits and assessments received from other companies, for reinsurance of them, and the amount of premiums and premium deposits and assessments returned to the insured during said year on policies cancelled, and the amount of premiums and premium deposits and assessments paid for reinsurance in other insurance companies of other States or foreign countries, authorized to do business in this State, and the amount of premiums and premium deposits and assessments and so-called dividends of unused or unabsorbed portion of all premiums and premium deposits and assessments returned or credited to policyholders during the year for which the tax is determined, and shall pay to said Commissioner on or before the 15th day of February a tax of two percentum upon such gross amount of premiums and premium deposits and assessments received, less such returned premiums and premium deposits and assessments and such reinsurance premiums and premium deposits, and assessments paid, and less the premiums

and premium deposits and assessments and so-called dividends or unused or unabsorbed portion of all premiums and premium deposits and assessments returned or credited to policyholders during the year for which the tax is determined, which tax shall be in lieu of all other franchise taxes imposed upon said corporation; provided, any taxes hereafter paid to the treasurer of any firemen's relief association of this State by fire insurance companies of other States and foreign countries and their agents, in accordance with the provisions of an act entitled "An act to facilitate the collection from fire insurance companies not organized under the laws of this State, but doing business herein, and their agents and brokers, of certain premiums for the benevolent funds of the several duly incorporated firemen's relief associations of this State," approved May second, one thousand eight hundred and eighty-five, shall be considered a part of the tax payable by such companies under this section, and nothing herein contained shall be construed to repeal, alter or change the provisions of the said recited act.

"And provided, further, that any taxes hereafter paid to the treasurer of any police pension fund by any foreign insurance company or its agents, in accordance with the provisions of an act entitled 'A further supplement to an act entitled "An act to remove the fire and police departments in the cities of this State from political control," approved May second, one thousand eight hundred and eighty-five, and to provide for the establishment, management and distribution of a police pension or retirement fund,' approved April 8th, one thousand nine hundred fifteen, shall be considered a part of the tax payable by such company under this section, and nothing herein contained shall be construed to repeal, alter or change the provision of the said recited act." (L. 1902, p. 433, as amended L. 1903, p. 506, L. 1906, p. 22 (C. S., p. 2857), L. 1916, c. 224, p. 451, L. 1924, c. 208, p. 437.)

The New Jersey statutes also contain the usual reciprocal or retaliatory provisions.

V.

Laws of Ohio.

Sections 5432, 5433, 5434, 5435, 5436 and 5438 of the General Code of Ohio as set forth in Volume 1 of Page's edition are as follows:

"Sec. 5432. Annual Statements of Foreign Insurance Companies. Every insurance company incorporated by the authority of another state or government, in its annual statement to the superintendent of insurance, shall set forth the gross amount of premiums received by it from policies covering risks within this state during the preceding calendar year, without deductions for commissions, return premiums, considerations paid for reinsurance or any deduction whatever. It shall also set forth therein in separate items, return premiums paid for cancellations and considerations, received from other companies for reinsurances in this state during such year. If the superintendent of insurance has reason to suspect the correctness of such statement he may make an examination, at the expense of the state, of the books of such company or its agents for the purpose of verifying them. (R. S. Sec. 2745.)

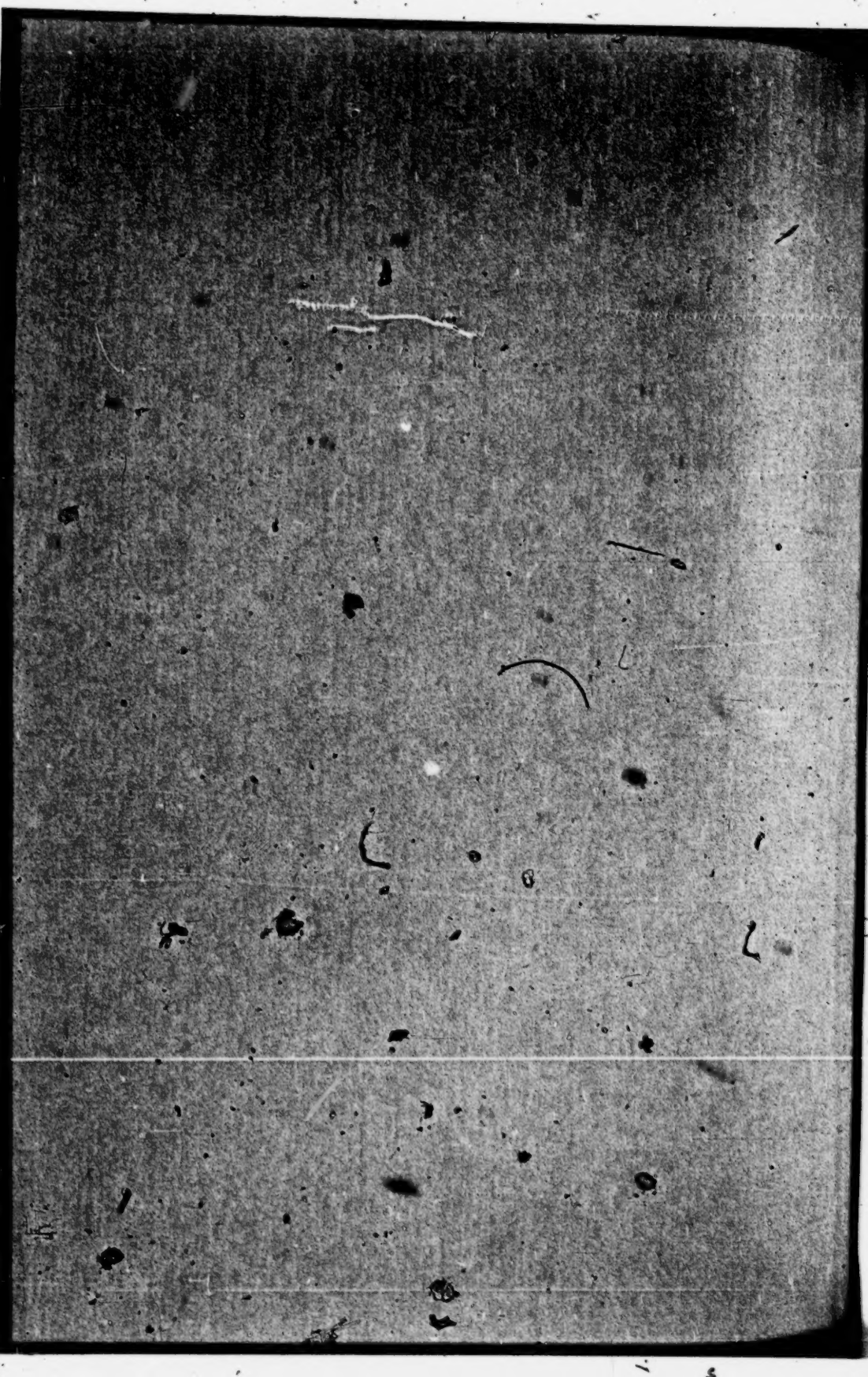
"Sec. 5433. Payment of Tax to Treasurer of State. If the superintendent of insurance finds such report to be correct, prior to the month of November in each year, he shall compute an amount of two and one-half per cent of the balance of such gross amount after deducting such return premiums and considerations received for reinsurances as shown by the next preceding annual statement and charge them to such company as a tax upon the business done by it in this state for the period shown by such annual statement, which amount shall be paid by each such company to the treasurer of state in the month of November next succeeding. All taxes so collected shall be credited to the general revenue fund of the state.

"Sec. 5434. Failure to Pay Tax or Make True Statement. If a company fails or refuses to pay such tax, after a statement thereof has been made and mailed to it, or if the statement required to be made

by it under Section fifty-four hundred and thirty-two is false or incorrect, the superintendent of insurance may revoke the license of such company doing business in this state. Upon failure or refusal to pay the tax, the superintendent of insurance shall certify that fact to the Attorney General, who shall thereupon begin an action against the company in the court of common pleas of Franklin County, or of any other county, as he may elect, to recover the amount of the tax. If such company ceases to do business in this state, it shall thereupon make report to the superintendent of insurance of the gross amount of premiums, not theretofore reported as provided in Section fifty-four hundred and thirty-two, received by it from policies covering risks within this state, prior to such discontinuance of business after deducting return premiums and considerations received for reinsurance, not theretofore so reported, and shall forthwith pay to the superintendent of insurance a like per cent of tax thereon. (R. S. Sec. 2745.)

"Sec. 5436. Retaliatory Provision. If the laws of another state, territory or nation authorize charges for the privilege of doing business therein, or taxes against insurance companies organized in this state, exceeding the charges provided in this chapter, like amounts shall be charged against all insurance companies of such state, territory or nation, doing business in this state, instead of the charges herein provided. (R. S. Sec. 2745.)"

"Sec. 5438. An insurance company or agent legally authorized to transact insurance business in this State shall not write, place or cause to be written or placed a policy, renewal of policy or contract for insurance upon property situated or located in this State, except through a legally authorized agent in this State, who shall countersign all policies so issued and enter the payment of the premiums upon his record. The writing, renewal, placing or causing to be written or placed of a policy of insurance in any other manner or form is a violation of the law providing for the payment of taxes by foreign insurance companies doing business in the State of Ohio as set out and provided in this chapter."



FILE COPY

OCT 11 1933

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 12

CONCORDIA FIRE INSURANCE COMPANY,
APPELLANT,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

NOTE.—THIS COPY OF THE STIPULATION IS SUBSTITUTED FOR THE ABSTRACT THEREOF AS PRINTED ON PAGE 98 OF THE TRANSCRIPT OF RECORD.

DEF'TS' EX. 1—12/17/31.

STATE OF ILLINOIS,
County of Cook, ss:

IN THE CIRCUIT COURT OF COOK COUNTY.

No. B-171,485.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

ALBANY INSURANCE COMPANY OF ALBANY, NEW YORK.

No. B-171,526.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THE CONCORDIA FIRE INSURANCE COMPANY OF MILWAUKEE, WISCONSIN.

No. B-171,531.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

DUBUQUE FIRE AND MARINE INSURANCE COMPANY OF DUBUQUE, IOWA.

No. B-171,536.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

EUREKA SECURITY FIRE AND MARINE INSURANCE COMPANY OF CINCINNATI, OHIO.

No. B-171,544.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY.

No. B-171,552.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

GIRARD FIRE AND MARINE INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA.

No. B-171,554.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

GLOBE INSURANCE COMPANY OF PENNSYLVANIA, OF PITTSBURGH, PENNSYLVANIA.

No. B-171,589.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

MECHANICS' INSURANCE COMPANY OF PHILADELPHIA, PA.

No. B-171,590.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

MECHANICS AND TRADERS INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.

No. B-171,597.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

MILWAUKEE MECHANICS' INSURANCE COMPANY OF MILWAUKEE, WISCONSIN.

No. B-171,600.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

NATIONAL-BEN FRANKLIN FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA.

No. B-171,601.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

No. B-171,639.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THE RELIABLE FIRE INSURANCE COMPANY OF DAYTON, OHIO.

No. B-171,665.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

SUPERIOR FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA.

No. B-171,669.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

TRANSCONTINENTAL INSURANCE COMPANY OF NEW YORK, N. Y.

No. B-171,677.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

UNITED AMERICAN INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA.

STIPULATION.

It is hereby stipulated and agreed, by and between counsel for the respective parties in each of the above entitled causes, that upon any trial of any of the above entitled causes the following facts shall be considered as proved by competent, relevant and material evidence:

I. During each of the years ending April 30, 1923, April 30, 1924, April 30, 1925, April 30, 1926, and April 30, 1927, each defendant in each of the above entitled causes was an insurance company incorporated by the authority of a State or Government other than the State of Illinois, and as such was doing business as a fire, marine and inland navigation insurance company in the County of Cook and State of Illinois, and, through its agents, in each of said years acquired net receipts from the business so conducted.

II. In each of the years 1923 to 1927, inclusive, various non-incorporated foreign associations, various individuals, various so-called "Lloyds," and various domestic fire insurance corporations were lawfully engaged in transacting the business of fire, marine and inland navigation insurance in the State of Illinois, and carrying on said business in direct competition with the defendant and with all other foreign incorporated fire insurance companies then and during said period lawfully transacting the business of fire, marine and inland navigation insurance in the State of Illinois.

III. Said non-incorporated foreign associations, individuals, Lloyds and domestic insurance corporations, aforesaid, during each of said years 1923 to 1927, inclusive, were not assessed for taxation upon their several net receipts covering fire, marine and inland navigation insurance risks assumed by them in Illinois, or upon any property other than their real estate and personal property other than net receipts, like all other property owners and taxpayers; and said foreign stock fire insurance corporations were, in each of said years, assessed for taxation upon their several net receipts derived from such competitive business in Illinois, and were likewise assessed upon tangible personal property and upon real estate owned, if any.

IV. During each of said years 1923 to 1927, inclusive, foreign casualty insurance corporations lawfully carried on in Illinois insurance business of the same character as that carried on by the defendant and by all other foreign fire insurance corporations, including making insurances on automobiles against theft, fire and public liability, and insurances against explosion, sprinkler leakage and other hazards upon which foreign fire, marine and inland navigation insurance companies were authorized to and did make insurances and derive net receipts in Illinois.

V. Said foreign casualty insurance corporations, during each of said years 1923 to 1927, inclusive, were not assessed for taxation upon their several net receipts derived from such competitive business transacted in Illinois during each of said years, or upon any property other than their real estate and personal property other than net receipts, like all other property owners and taxpayers, and such companies were, during said period, acting in direct competition in making insurances in the same territory with the defendant and all other foreign stock fire insurance corporations. Said defendant and other foreign stock fire insurance companies were, during each of said years, assessed for taxation upon the net receipts of such competitive business severally transacted by them in Illinois.

VI. Each defendant above named was duly notified to appear and did appear before the Board of Review of Cook County, on December 15, 1927, for a hearing with respect to the assessment of its net receipts for said years.

VII. Nothing hereinabove contained shall be deemed to preclude either of the parties from offering other evidence upon the trial of any of the above entitled causes, in addition to the facts hereinabove stipulated as true, subject to objections.

JOHN A. SWANSON,
LEWIS H. GERMAIN,
HIRAM T. GILBERT,
Attorneys for the Respective Plaintiffs Above Named.

SILBER, ISAACS, SILBER & WOLEY,
Attorneys for the Respective Defendants Above Named.

Dated Chicago, Dec. 10, 1931.

[Endorsed:] G. No. B-171,485. T. No. —. In the Circuit Court of Cook County. The People of the State of Illinois *vs.* Albany Insurance Company of Albany, New York, and fifteen other insurance companies. Stipulation. Silber, Isaacs, Silber & Woley, Attorneys and Counselors, 208 So. La Salle St. Telephone: Central 6144, Chicago.

(4036)

CORR. TED COPY

P. 7

SUPREME COURT OF THE UNITED STATES.

No. 12.—October Term, 1933.

Concordia Fire Insurance Company, Appellant, *vs.* The People of the State of Illinois. } Appeal from the Supreme Court of the State of Illinois.

[June 4, 1934.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This was an action of debt brought by the State of Illinois, in a court of that State, against the Concordia Fire Insurance Company, to recover taxes levied on the net receipts of the latter from its insurance agencies in Cook County, Illinois, during annual periods ending April 30 in each of the years 1923-1927. The defendant interposed a plea of *nil debet*. The cause was heard by the court without a jury under a stipulation entitling the defendant to introduce any evidence which would be admissible in equity under appropriate pleadings, and enabling the court to give effect to equitable principles and render judgment in conformity to the evidence. The court found the issues for the defendant and gave judgment accordingly. The Supreme Court of the State disapproved that judgment and in its stead entered one awarding the plaintiff a recovery of smaller taxes than were claimed for the years ending April 30 in 1923-1926 and of the full tax claimed for the year ending April 30 in 1927. 350 Ill. 365. The defendant then sought and was allowed an appeal to this Court—the ground for the appeal being that the state court overruled the defendant's claim that the state statute, under which the taxes were levied, when construed and applied as sustaining them (it was so construed and applied by that court), conflicts with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The defendant is a Wisconsin insurance corporation and, conformably to its charter and to licenses from Illinois, has been engaged for several years in conducting in Cook County in the latter State the business of insuring against fire, marine and inland